TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 240.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE NATION ET AL., APPELLANTS,

vs.

THE CHEROKEE NATION.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 19, 1903.

(18,871.)

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I.—*Petition.*

Filed August 4, 1898.

Court of Claims.

THE DELAWARE INDIANS RESIDING IN the Cherokee Nation, as a Tribe and Individually; George Bullette, Henry Armstrong, John H. Secondyne, John Young, John Sarcoxie, Jr., Individual Delaware Indians Residing in the Cherokee Nation and the Business Committee of Such Delaware Indians; John Bullette and Richard C. Adams, Individual Delaware Indians Residing in said Cherokee Nation and the Representatives of said Delaware Indians and said Business Committee, Suing on Behalf of Themselves and All Other Delaware Indians Now or Lately Residing in said Cherokee Nation and the Children, Descendants, Heirs-at-law, and Personal Representatives of All the Deceased Delaware Indians Whose Names Appear upon the Register of Delaware Indians Made in February, 1867, by John G. Pratt, the United States Indian Agent for the Delaware Indians and on File in the Department of the Interior of the United States and Known as the "Delaware Register," Plaintiffs,

against

THE CHEROKEE NATION, Defendants.

In Equity. No. 21139.

To the honorable the Court of Claims of the United States:

The petition of the above named plaintiffs, suing as aforesaid, respectfully shows to this court:

2 First. That in and by an act of Congress approved June 28, 1898, and entitled "An act for the protection of the people of the Indian Territory and for other purposes," the Delaware Indians residing in the Cherokee nation were authorized and empowered to bring suit in the Court of Claims of the United States within sixty days after the passage of said act against the Cherokee nation for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee nation, dated April 8, 1867.

This suit is brought in pursuance of the authority of the said act.

Second. That a treaty was made at the city of Washington in the District of Columbia on the 19th day of July, in the year of our Lord one thousand eight hundred and sixty-six, by and between Dennis N. Cooley and Elijah Sells, commissioners on the part of the United States, and Smith Christy, White Catcher, James McDaniel, S. H. Benge, Daniel H. Ross and J. B. Jones, delegates of the Cherokee nation appointed by resolution of the national council on the part of said Cherokee nation, and the Senate of the United States did, on the 27th day of July, advise and consent to the ratification of the said treaty with certain amendments thereto, which said amendments were accepted by the said Cherokee nation on the 31st day of July, 1866, and which said treaty so amended was signed by the President of the United States and the seal of the United States affixed thereto on the 11th day of August, 1866, and thereupon the same became binding and effective.

That the fifteenth article of said treaty is as follows:

"The United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of the 96° on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz:

Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee nation, on equal terms in every respect with native citizens.

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And should any such tribe, thus settling in said country, decide to preserve their tribal organizations, and to maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee nation, they shall have a district of country set off for their use by metes and bounds equal to 160 acres, if they should so decide, for each man, woman and child of said tribe, and shall pay for the same into the national fund such price as may be agreed on by them and the Cherooke nation, subject to the approval of the President of the United States, and in case of disagreement the price to be fixed by the President.

And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said county, and thence afterwards they shall enjoy all the rights of native Cherokees.

But no Indians who have no tribal organizations, or who shall

determine to abandon their tribal organization, shall be permitted to settle east of the 96° of longitude without the consent of the Cherokee national council, or of a delegation duly appointed by it, being first obtained. And no Indians who have and determine to preserve their tribal organizations shall be permitted to settle, as herein provided, east of the 96° of longitude without such consent being first obtained, unless the President of the United States, after a full hearing of the objections offered by said council or delegation to such a settlement, shall determine that the objections are insufficient, in which case he may authorize the settlement of such tribe east of the 96° of longitude.

Third. That a treaty between the United States and the Delaware tribe of Indians was concluded July 4, 1866, ratified by a Senate of the United States, July 26, 1866, and proclaimed by the President of the United States, August 10, 1866, of which articles 4 and 5 are as follows:

"Article 4. The United States agree to sell to the said Delaware Indians a tract of land ceded to the Government by the Choctaws and Chickasaws, the Creeks or the Seminoles, or which may be ceded by the Cherokees in the Indian country to be selected by the Delawares in one body, in as compact a form as practicable, so as to contain timber, water and agricultural lands, to contain in the aggregate, if the said Delaware Indians shall so desire, a quantity equal to one hundred and sixty (160) acres for each man, woman and child who shall remove to said country, at the price per acre paid by the United States for the said lands, to be paid for by the Delawares out of the proceeds of sale, of lands in Kansas heretofore provided for. The said tract of country shall be set off with clearly and permanently marked boundaries by the United States; and also surveyed as public lands are surveyed, when the Delaware council shall so request, when the same may in whole or in part, be allotted by said council to each member of said tribe residing in said county, said allotment being subject to the approval of the Secretary of the Interior."

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"Article 5. The United States guarantee to the said Delawares peaceable possession of their new home herein provided to be selected for them in the Indian country, and protection from hostile Indians and internal strife and civil war, and a full and just participation in any general council or territorial government that may be established for the nations and tribes residing in said Indian country.

Fourth. That on the 8th day of April, 1867, articles of agreement were made between the Cherokee nation represented by William P. Ross, principal chief, Riley Keyes and Jesse Bushyhead, delegates duly authorized, as parties of the first part, and the Delaware tribe of Indians represented by John Connor, principal chief, Charles Journeycake, assistant chief, Isaac Journeycake and John Sarcoxie, delegates for and on behalf of the said Delaware tribe duly authorized, which said agreement was approved by the President of the United States April 11th, 1867, and is as follows:

"Articles of agreement made this 8th day of April, A. D. 1867, between the Cherokee nation, represented by William P. Ross, principal chief, Riley Keyes, and Jesse Bushyhead, delegates duly authorized, parties of the first part, and the Delaware tribe of Indians, represented by John Connor, principal chief; Charles Journeycake, assistant chief; Isaac Journeycake and John Sarcoxie, delegates for and on behalf of said Delaware tribe, duly authorized, witnesseth:

Whereas by the fifteenth article of a certain treaty between the United States and Cherokee nation, ratified August 11, 1866, certain terms were provided, under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of 96° of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee nation, subject to the approval of the President of the United States; and whereas by a treaty between the United States and the Delaware tribe of Indians, ratified August 10, 1866, the removal of the said Delawares to the Indian country south of Kansas was provided for; and, in the fourth article whereof, an agreement was made by the United States to sell to the Delawares a tract of land, being part of a tract the cession of which by the Cherokees to the United States was then contemplated; and whereas no such cession of land was made by the Cherokees to the United States, but, in lieu thereof, terms were provided, as hereinbefore mentioned, under which friendly Indians might be settled upon their lands; and whereas, a full and free conference has been had between the representatives of the Cherokees and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands, and their consolidation with said Cherokee nation.

Now, therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

The Cherokees, parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions hereinafter mentioned, agree to sell to the Delawares for their occupancy, a quantity of land east of the line of the 96° west longitude, in the aggregate equal to one hundred and sixty acres for each individual of the Delaware tribe, who has been enrolled upon a certain register made February 18, 1867, by the Delaware agent, and on file in the Office of Indian Affairs, being the list of Delawares who elect to remove to the 'Indian country,' to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after signing of this agreement, desire to be added, thereto, and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line 96° not already selected and in possession of other parties, and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for

the Delawares, to include their improvements according to the legal subdivisions when surveys are made (that is to say, one hundred and sixty acres for each individual), shall be guaranteed to each Delaware incorporated by these articles into the Cherokee nation, nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee nation imposed upon native citizens thereof.

Provided that nothing herein shall confer the right to alienate, convey, or dispose of any such lands except in accordance with the constitution and laws of said Cherokee nation.

And the said Delawares, parties of the second part, agree that there shall be paid to the said Cherokees from the Delaware funds now held or hereafter received by the United States, a sum of money equal to one dollar per acre for the whole amount of one hundred and sixty acres of land for every individual Delaware who has already been registered upon the aforesaid list, made February 18, 1867, with the additions thereto heretofore provided for.

And the Secretary of the Interior is authorized and *re*requested to sell any United States stocks belonging to the Delawares to procure funds necessary to pay for said lands; but in case he shall not feel authorized, under existing treaties, to sell such bonds belonging to the Delawares, it is agreed that he may transfer such United States bonds to the Cherokee nation, at their market value, at the date of such transfer.

And the said Delawares further agree, that there shall be paid from their funds now or hereafter to come into possession of the United States a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned and removing to the Indian country sustains to the whole number of Cherokees residing in the Cherokee nation. And for the purpose of ascertaining such relative numbers, the registers of the Delawares herein referred to, with such additions as may be made within one month from the signing of this agreement, shall be the basis of calculation as to the Delawares, and an accurate census of the Cherokees residing in the Cherokee nation shall be taken under the laws of that nation within four months, and properly certified copies thereof, filed in the Office of Indian Affairs, which shall be the basis of calculation as to the Cherokees.

And that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is $678,000.

And the Delawares further agree, that in calculating the total amount of said national fund there shall be added to the said sum of $678,000 the sum of $1,000,000, being the estimated value of the

Cherokee neutral lands in Kansas, thus making the whole
7 Cherokee national fund $1,678,000; and this last mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund.

Provided, that as the $678,000 of funds now on hand belonging to the Cherokees is chiefly composed of stocks of different values, the Secretary of the Interior may transfer from the Delawares to the Cherokees a proper proportion of the stocks now owned by the Delawares of like grade and value, which transfer shall be in part of the *pro rata* contribution herein provided for by the Delawares to the funds of the Cherokee nation; but the balance of the *pro rata* contribution by the Delawares to said fund shall be in cash or United States bonds, at their market value.

All cash, and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under the agreement, shall be invested and applied in accordance with the 23d article of the treaty with the Cherokees of August 11, 1866.

On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered as above provided, shall become members of the Cherokee nation, with the same rights and immunities, and the same participation (and no other) in the national funds, as native Cherokees, save as hereinbefore provided.

And the children hereafter born of such Delawares so incorporated into the Cherokee nation, shall, in all respects, be regarded as native Cherokees.

WILL P. ROSS, *Principal Chief*,
RILEY KEYES,
Cherokee Delegation.

his
JOHN x CONNOR,
mark.
Principal Chief,
CHARLES JOURNEYCAKE,
ISAAC JOURNEYCAKE,

his
JOHN x SARCOXIE.
mark.
Delaware Delegation.

Executed and delivered in our possession by the above named delegates of the Cherokee and Delaware nations, at the city of Washington, in the District of Columbia, the day and year first above written.

JOHN G. PRATT.
W. A. PHILLIPS.
EDWARD S. MENAGETH.

8 DEPARTMENT OF THE INTERIOR, *April* 11, 1867.

The within agreement between the Cherokee and Delaware tribes of Indians concluded on the 8th instant, and providing for uniting

the two tribes as contemplated by the Cherokee treaty of July 19, 1866, is respectfully submitted to the President, with the recommendation that it be approved.

O. H. BROWNING, *Secretary.*

Approved April 11, 1867.

ANDREW JOHNSON."

Fifth. That at the date of the making and approval of the last mentioned agreement, there were 985 individuals of the Delaware tribe who had been enrolled upon the register referred to in the agreement last hereinbefore set forth, being the list of Delawares who elect to remove to the "Indian country," including the names of other Delawares added with the consent of the Delaware council within one month after signing of the said agreement and those desiring to be added thereto as provided in the said agreement.

212 of the said 985 individuals of the Delaware tribe enrolled as aforesaid are now living and residing in the Cherokee nation and are among the parties-plaintiff herein. The individual plaintiffs, George Bullette, Henry Armstrong, John H. Secondyne, John Young, John Sarcoxie, Jr., John Bullette and Richard C. Adams were among the 985 individuals of the Delaware tribe enrolled as aforesaid and are among the said 212 of the same who are now living and residing in the Cherokee nation.

773 of the 985 individuals of the Delaware tribe registered as hereinbefore set forth have died since the making and approval of said agreement, leaving children descendants, heirs at law and personal representatives now residing in said Cherokee nation. Such children, descendants, heirs at law and personal representatives are also parties plaintiff herein. The individual plaintiffs hereinbefore mentioned are among the children, descendants, heirs at law and personal representatives of such deceased individual Delawares.

The question in controversy herein is one of common and general interest to all of such living Delawares so registered as aforesaid and to the children, descendants, heirs at law and personal repre-
9 sentatives of such as are deceased as aforesaid. The said living individual Delawares so registered as aforesaid and the children, descendants, heirs at law and personal representatives of such deceased individual Delawares are very numerous and it is impracticable to bring them all before the court personally or by name or to name them in the title to this action. They are, therefore, described generally in the said title as "The Delaware Indians residing in the Cherokee nation," and the individual plaintiffs above named sue not only on behalf of themselves, but on behalf of all such other individual living Delaware Indians and such other children, descendants, heirs at law and personal representatives of such deceased individual Delaware Indians. They pray that if it become necessary in the progress of this suit the names of such individual living Delawares and of such children, descendants, heirs at law and personal representatives of such deceased Delawares may be inserted in the title of this action as parties-plaintiff herein.

Sixth. That the number of acres or land—being 160 acres for each individual of the Delaware tribe enrolled as aforesaid—sold, or agreed to be sold, by the said Cherokees to the said Delawares under and by virtue of the said agreement, was in the aggregate 157,600 acres.

The said Delawares, parties of the second part in said agreement, thereupon paid or caused to be paid to the said Cherokees from the Delaware funds then held or thereafter received by the United States the sum of $157,600, the agreed purchase price for said land and being $1.00 per acre for the said 157,600 acres, which said payment was made for and as the said agreed purchase price for the said lands.

Seventh. That at the time of the making and approval of the said agreement, the whole number of Cherokees residing in the Cherokee nation was 13,573.

That the said Delawares further paid to the said Cherokees and contributed to the Cherokee national fund from the funds of the said Delawares then in possession of the United States, or which thereafter came into such possession, the sum of one hundred twenty-one thousand eight hundred twenty-four and 28–100 dollars ($121,824.28), being the sum which sustained the same proportion to the theretofore existing Cherokee national fund as established and defined in and by said agreement that the number of Delawares registered as above mentioned and moving into the Indian country as aforesaid sustained to the whole number of Cherokees residing in the Cherokee nation as aforesaid, and the said Delawares fully and in all respects complied with, fulfilled and performed all the conditions and stipulations of the said agreement on their part to be complied with, fulfilled and performed.

Eighth. That thereby and by virtue of the premises, the said Delawares became the equitable owners of, and entitled to select, possess, own and forever enjoy, 157,600 acres of land to be selected and segregated by them in accordance with the provisions of the said agreement.

And the said Delawares and their children thereafter born, and their descendants, also became entitled to share in the said Cherokee national fund so created by the union of the theretofore existing Cherokee national fund with the fund so contributed thereto by the Delawares, as aforesaid, and in the national lands of the Cherokee nation remaining after the segregation and separation therefrom of the 157,600 acres sold as aforesaid by the said Cherokees to the said Delawares in proportion that the number of the said Delawares registered as aforesaid, bore to the said Cherokees numbering as aforesaid, being in the ratio of (1) to thirteen and 78–100 (13 78–100).

That thereupon the said Delawares selected the said 157,600 acres of land from the said Cherokee reservation east of line 96°, not theretofore selected or in possession of other parties, entered into the occupancy and possession of the same and made extensive and

valuable improvements thereon, and they, their children, descendants, heirs at law and personal representatives have continued to occupy and possess the said lands and the said improvements and have continued to make extensive and valuable improvements thereon and to reside thereon down to the present time; all of which has been done with the knowledge and consent of the said Cherokees and the said Cherokee nation and at the suggestion, instance, desire and request of the said Cherokees and the said Cherokee nation.

That the said Delawares have not held their said lands in common or in community of possession, but in severalty and individually, each of the said Delawares occupying, cultivating and improving a special tract thereof of which he or she had for himself or herself the full and exclusive right and benefit, and they have so held them individually and in severalty from the time when they selected and segregated the same as aforesaid in accordance whith the provisions of the said agreement continually down to the present time; all of which has been done with the knowledge, assent and approval of the said Cherokees and the said Cherokee nation and of the Government of the United States.

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Ninth. That the said Delawares have not abandoned their tribal organization but have preserved the same and have maintained their tribal laws, customs and usages not inconsistent with the constitution and laws of the Cherokee nation and of the Government of the United States. The Government of the United States has held and kept invested for them a large trust fund in which neither the Cherokees nor the Cherokee nation have had or claimed any right or interest whatsoever, and from which payments of principal and income have been from time to time made by the said Government of the United States to or for or on behalf of the said Delawares. The said Delawares have always had and maintained tribal councils which have had charge of the general and united interests of the said Delawares and the moneys so paid out as aforesaid by the Government of the United States to and for and on behalf of said Delawares has been so paid out at the request of the said Delaware tribal council. The said Delawares, by the authority and through the agency of their said tribal council, have built school houses, churches and a pay house or tribal public building.

They have, during all this time since their removal to the Cherokee lands as aforesaid, maintained their relationship to the Cherokee nation as citizens thereof and to their own tribe and tribal council, being governed and controlled by the said tribal council in all matters not conflicting with the jurisdiction of the said Cherokee nation and of the Government of the United States.

Their tribal name by which they are known and designated is "the Delaware Indians residing in the Cherokee nation." As such tribe and as individuals, they are recognized in the act of Congress approved June 28, 1898, and entitled "And act *of* the protection of the people of the Indian Territory and for other purposes" hereinbefore referred to and hereinafter more particularly set forth and

they are authorized by such act to bring this suit and the
12 tribe whose name is set forth in the title of this action as "the Delaware Indians residing in the Cherokee nation" is such tribe. The individual plaintiffs, George Bullette, Henry Armstrong, John H. Secondyne, John Young, and John Sarcoxie, Jr., are a business committee elected at the suggestion and request of the Interior Department of the United States, at and by such tribal council and have charge of the business interests of the said Delaware Indians and the said tribe.

There are now 920 Delawares residing in the Cherokee nation constituting such Delaware tribe and maintaining such tribal organization and acting by and through the agency of their tribal council and the said business committee elected thereby as aforesaid. Such tribal council and such business committee have authorized and directed the bringing of this suit and the same is instituted by, through and under their directions as well as by, through and under the directions of the individual Delawares, interested in this controversy as aforesaid.

At the time of the making and consummation of the agreement between the Delawares and the Cherokees hereinbefore set forth, it was the general policy of the Government of the United States to allow the various Indian tribes and nations to live under governments and laws of their own and in all matters not affecting the paramount sovereignty of the United States such Indian tribes or nations were allowed to govern themselves and manage their own affairs.

Recently, however, the Indians and the Indian tribes have been brought under the general laws of the United States and the special tribal laws and tribunals have been abolished.

Tenth. The twenty-fifth section of the act of Congress above mentioned, approved June 28, 1898, and entitled "An act for the protection of the people of the Indian Territory and for other purposes," is as follows:

"SEC. 25. That before any allotment shall be made of lands in the Cherokee nation, there shall be segregated therefrom by the commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee nation under agreement of April eighth, eighteen hundred and sixty-seven,
subject to the judicial determination of the rights of said de-
13 scendants and the Cherokee nation under said agreement. That the Delaware Indians residing in the Cherokee nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee nation dated April eighth, eighteen hundred and sixty-seven; or the Cherokee nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudicate and fully

determine the same, with right of appeal to either party to the Supreme Court of the United States."

Eleventh. By reason of the premises and of the contracts, agreements, sales, purchases and payments aforesaid, and of the acts of Congress hereinbefore mentioned and referred to, the said Delaware Indians are legally and equitably entitled to the said 157,600 acres of land bought and paid for by them as aforesaid and which they have selected and segregated from the other lands of the Cherokee nation as aforesaid, in pursuance of the provisions of the said agreement between the said Delawares and said Cherokees hereinbefore set forth.

The said Delaware Indians are also entitled to share with the Cherokees *pro rata* in the division about to be made under the provisions of said act of Congress, and of other acts of Congress previous thereto of the other Cherokee national lands and of the Cherokee national funds.

The said Cherokees and the said Cherokee nation, without any just or sufficient reason therefore, deny in whole or in part the rights of the said Delawares in the premises as above set forth.

Under and by virtue of the said act of Congress approved June 28, 1898, as aforesaid, and other acts of Congress, the national lands and funds of the said Cherokee nation are now about to be distributed to the members of the said nation, and to the persons entitled to receive the same in severalty and it is necessary that the questions in dispute between your petitioners, the said Delawares and the Cherokee nation and the members thereof other than the said Delawares, shall be adjudicated and determined in order that said lands and funds may be lawfully and properly divided and in order that those persons may receive the same who are lawfully entitled thereto.

In and by the twenty-fifth section of the said act of Con-
14 gress, approved June 28, 1898, jurisdiction has been conferred upon this court to hear and determine such disputes and this suit is brought for the purpose of securing such adjudication and determination.

Twelfth. Since the making and approval of the said agreement between the Cherokees and Delawares as aforesaid, the said Cherokee nation, without right, authority or jurisdiction, has assumed and essayed to increase the number of said Cherokees and to admit other persons, not Cherokees and not entitled thereto, to share in the lands and funds of the said Cherokee nation, and in this way to cut down and diminish the share which the said Delawares are entitled to have and receive in such communal funds and lands of the Cherokee nation and for which the said Delawares paid their money as aforesaid.

The said Cherokee nation now, wrongfully and without any just cause or reason therefor, claims that the said persons whom they have assumed and essayed, without right or authority to admit to a share in the rights of said Cherokees and of the citizens of said

Cherokee nation, are entitled so to share in the division and allotment of the Cherokee national lands and funds.

The said Delawares deny the same.

Your petitioners are unable to state the exact number of individuals whom the said Cherokee nation has without right or authority as aforesaid pretended to admit to share in the rights aforesaid but the number is very large—many thousands as your petitioners believe—and your petitioners ask that it be determined and adjudged in this action who, and how many the persons are who are of right entitled to share in the said communal lands and funds of the said Cherokee nation and what proportion thereof your petitioners, the said Delawares, are entitled to receive.

Thirteenth. That a partial division has already heretofore been made of the said funds of the said Cherokee nation and many persons not entitled thereto as aforesaid have been permitted by the said Cherokee nation to share in such division.

Not only did the said Cherokee nation, as a body and in its corporate capacity, wrongfully and without right or authority consent to the sharing in said funds by persons not entitled to share therein, but many individual Cherokees—some of them holding high official positions in said tribe or nation—have consented to, and participated in, the paying over of such funds to such individuals not entitled thereto although they knew that said persons so sharing in said funds and to whom said funds were so paid over as aforesaid, were not entitled thereto. Your petitioners, the said Delawares have thereby been greatly injured and damaged and their individual shares much diminished.

Your petitioners, the said Delawares, are unable to state just how much money has been so wrongfully paid out, distributed and shared in by persons not entitled to receive the same, but they pray that an accounting may be had of such moneys paid over and distributed as aforesaid, and that none of such moneys so improperly and wrongfully paid over, distributed and shared in to and by persons not entitled to receive the same may be charged up against the shares of the said Delawares, but that the loss occasioned by such improper payments and distributions may be borne by the members of the said Cherokee nation other than said Delawares or by the individual Cherokees so wrongfully consenting thereto and participating therein as aforesaid, and that the said Delawares may all receive the part or share of such lands and funds which they would have received if it had not been for such unlawful and improper payments and distributions.

Fourteenth. The said Cherokee nation has also improperly and without right or authority used its communal funds, and expended the same wastefully and lavishly to prevent the Delawares from receiving their just and proper share in the said Cherokee national funds and lands as aforesaid.

Your petitioners are unable to state the exact amount which the said Cherokees have so improperly used and expended in so preventing as aforesaid, the said Delawares from receiving their proper

part and share in said Cherokee national lands and funds, but they pray that an accounting may be had of such moneys so unlawfully, wastefully and lavishly expended, and that no part of the same shall be charged against the shares of the said Delawares, but that the whole thereof shall be charged against the shares of the said Cherokees or the members of the said Cherokee nation other than the said Delawares, and that the Delawares may receive the same part, share and proportion of said lands and funds that they
16 would have received if such unlawful, wasteful and lavish payments and expenses had not been made and incurred.

Fifteenth. The said Cherokees have made many other wasteful, lavish and unlawful expenditures of their national funds and have wastefully and lavishly paid out and expended the same without any right or authority for purposes other than proper public and national purposes, and the said Delawares have derived no benefit or advantage therefrom, but the amount coming to them upon the distribution of such funds has been thereby decreased and diminished.

Your petitioners are unable to state just how much the amount of such unlawful, lavish and improper expenditures has been, but they allege on information and belief that the same has amounted to more than five hundred thousand dollars ($500,000), and they pray that an accounting may be had of the moneys so paid out and expended by the said Cherokees from their national fund as aforesaid, and that no part of such unlawful and improper expenditures may be charged against the said Delawares, but that the whole thereof shall be charged against the said Cherokees or the members of the Cherokee nation, other than the said Delawares or against the persons who have consented thereto or participated therein, and that the said Delawares may receive such portion of such national fund as they would have received if such unlawful and improper expenditures had not been made.

Sixteenth. That in addition to the funds now in hand in the said Cherokee national fund, the said Cherokee nation has claims against the United States Government, and other claims, which, if recovered, would belong to said Cherokee national fund and in which your petitioners, the said Delawares, will be entitled to share, and they also have sources of income and revenue from the lease of lands, railroad privileges, town sites and otherwise, in all of which the said Delawares are entitled to share as aforesaid.

Wherefore, your petitioners demand judgment against the said Cherokee nation as follows:

1. That the rights of your petitioners, the said Delaware Indians, as a tribe and individually, in and to the lands and funds of the said Cherokee nation under their contract and agreement
17 with the said Cherokee nation, dated April 8, 1867, and hereinbefore set forth, may be fully determined, defined and adjudicated by this court.

2. That this court shall determine and adjudge that the said Delaware Indians are entitled to the 157,600 acres of land purchased

and paid for by them by virtue, and in pursuance of the agreement hereinbefore set forth between the said Cherokees and the said Delawares, dated April 8, 1867, and thereafter selected by them as aforesaid, and to own and hold the same in fee simple to them and to their heirs and assigns forever.

3. That it be adjudged and decreed that it is the right and duty of the said Cherokee nation to convey, by a good and sufficient deed with apt words to vest the grantee with a perfect and indefeasible estate in fee simple, to the said Delaware Indians residing in the Cherokee nation the said 157,600 acres of land so sold by the said Cherokee nation to the said Delaware Indians as aforesaid, and so paid for as aforesaid by the said Delaware Indians to the said Cherokee nation and so selected by the said Delaware Indians in accordance with the provisions of the said contract of sale hereinbefore set forth.

That said conveyance be made to such of the 985 Delaware Indians whose names are contained upon the register aforesaid as are now living and to the heirs at law of such as are since deceased.

4. That this court shall determine and adjudge that the said Delaware Indians are entitled to share in the remaining lands of the Cherokee nation other than the 157,600 acres purchased and paid for by the said Delawares as aforesaid, and in the Cherokee national fund, equally with every individual lawfully and properly belonging to said Cherokee nation, and that none but such persons lawfully and properly belonging to such Cherokee nation are entitled to share in such division of such lands and funds, and that this court shall determine and adjudge how many and what individuals are entitled to share in such division and how large a proportion of such lands and funds shall be allotted and paid over to your petitioners, the said Delawares.

5. That the said Cherokee nation shall account for the said national fund of said Cherokees and for all expenditures that
18 have been made therefrom, and that this court shall determine how much such fund does or should amount to, and, if it shall be found that payments have been made therefrom improperly or to persons not entitled to receive the same or to share therein that such payments shall be disallowed, and that no part thereof shall be charged against the shares of the said Delawares but that the whole thereof shall be charged against the members of the said Cherokee nation other than the said Delawares and that the said Delawares shall receive the same amount, share and proportion thereof that they would have received had no payments been unlawfully or improperly made therefrom.

6. That this court shall adjudicate and determine that the said Delawares are entitled to receive the same share and proportion in any amounts hereafter recovered or received by the said Cherokee nation or for, or for the benefit of, said Cherokee national fund, from any source whatsoever, that they are now entitled to receive in and from the funds now in hand.

7. That your petitioners, the said Delaware Indians residing in

the Cherokee nation, both as a tribe and individually may have such other and further relief as to this court may seem just and proper and as they may show themselves entitled to in the premises, and may also have judgment for their taxable costs and disbursements herein.

WALTER S. LOGAN,
Attorney for Petitioners, 27 William St.,
Borough of Manhattan, New York City.

19 (U. S. int. rev. stamp 10c. cancelled.)

CITY, COUNTY, AND STATE OF NEW YORK, } ss:
Southern District of New York, }

On this second day of August, 1898; before me personally came and appeared Richard C. Adams, one of the plaintiffs or petitioners above named and one of the Delaware Indians residing in the Cherokee nation, who, being by me first duly sworn, deposed and said that the foregoing petition and the matters therein stated are true to the best of his knowledge, information and belief and that he believes that the facts as stated in said petition are true.

RICHARD C. ADAMS.

Sworn to before me this 2nd day of August, 1898.

[SEAL.] MYRA B. MARTIN,
Notary Public, 168, City and County of New York.

20&21 Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE Nation, as a Tribe and Individually; George Bullette, Henry Armstrong, John H. Secondyne, John Young, John Sarcoxie, Jr., Individual Delaware Indians Residing in the Cherokee Nation and the Business Committee of Such Delaware Indians; John Bullette and Richard C. Adams, Individual Delaware Indians Residing in said Cherokee Nation and the Representatives of said Delaware Indians and said Business Committee, Suing on Behalf of Themselves and All Other Delaware Indians Now or Lately Residing in said Cherokee Nation and the Children, Descendants, Heirs-at-law, and Personal Representatives of All the Deceased Delaware Indians Whose Names Appear upon the Register of Delaware Indians Made in February, 1867, by John G. Pratt, the United States Indian Agent for the Delaware Indians, and on File in the Department of the Interior of the United States and Known as the "Delaware Register," Plaintiffs,

against

THE CHEROKEE NATION, Defendants.

No. 21139.

22 II.—*Answer to Petition.*

Filed October 4, 1898.

To the honorable the Court of Claims of the United States:

Now comes the defendant, The Cherokee Nation, and, answering the petition herein, says:

First. The defendant admits the allegations of the first, second, third, fourth and seventh paragraphs of the petition.

Second. Answering the fifth paragraph, defendant says it is unable to say of its own knowledge whether the children, descendants, heirs-at-law and personal representatives of the individuals now deceased of the Delaware tribe as registered in February, 1867, by John G. Pratt, United States Indian agent for the Delaware Indians, are in fact parties plaintiff herein or whether the individual plaintiffs hereinbefore mentioned are among the children, descendants, heirs-at-law and personal representatives of such deceased individual Delawares, but it is informed and believes, and upon such information avers, that such children, descendants, heirs-at-law and personal representatives are not among the individual plaintiffs named in said petition.

Third. Answering the sixth paragraph, defendant denies that 160 acres of land for each individual of the Delaware tribe enrolled as

aforesaid, or any other number of acres, was sold or agreed to be sold by said Cherokees to said Delawares by virtue of said agreement or otherwise, but said defendant avers that under and by virtue of said agreement each of the individual registered Delawares became a member of the Cherokee nation, and as such became entitled to select and occupy as a home, during his life only, a tract not exceeding 160 acres of the national land of said nation.

Fourth. Answering the eighth paragraph of the petition, defendant denies that the said Delawares or any of them became equitable owners of and entitled to select, possess, own and forever
23 enjoy the 157,600 acres of land as set forth in said paragraph or any part thereof.

Defendant admits that the said Delawares and their children born after the registry as aforesaid and their descendants became entitled to share in the Cherokee national fund, and in the national lands of the Cherokee nation. But defendant alleges that this right of the Delawares, their children and descendants, belongs to and attaches to them as members of the Cherokee nation solely, and not by reason of their being Delawares or children or descendants of Delawares, and that in the national lands of the Cherokee nation are and must be included all the lands (being not more than 160 acres for each individual) selected and occupied by the registered Delawares under their contract with the Cherokees; the said lands so selected and occupied being freed from all claim of occupancy or other claim of any kind upon the death of the registered Delaware who originally selected and occupied the same.

Defendant denies that the share of the Delawares in said lands or funds was or is in the proportion that the number of the said Delawares registered as aforesaid bore to the said Cherokees, or that said shares of the Delawares were or are in the ratio of 1 to 13.78, or in any other fixed and certain ratio. On the contrary, defendant alleges that each of the registered Delawares and each of their children and descendants, has been and is entitled to share in said national funds and national lands as any other member of the Cherokee nation, having the same rights and privileges and none other of other members of the said nation, save and except the right to each of the said registered Delawares living at the time of any future allotment of national lands to have set off and allotted to him at least 160 acres of land to be selected by him as specifically set out in the contract made between the Delawares and Cherokees, set forth in said petition.

Defendant is unable to say whether the said Delawares se-
24 lected the said 157,600 acres of land from the Cherokee reservation east of 96 degrees of west longitude and entered into the occupancy and possession of the same or made valuable improvements thereon, but is informed and believes, and so believing avers, that said Delawares have not selected, occupied and improved the said 157,600 acres of land as alleged, and defendant asserts that if the children, descendants, heirs-at-law, and personal representatives of said registered Delawares have continued to occupy and

possess the said lands and improvements it has been solely through their rights as Cherokee citizens, and not by virtue of any right or privilege of said children, descendants, heirs-at-law and personal representatives of registered Delawares as such, nor at the instance, desire or request of the said Cherokees, or of the Cherokee nation.

Defendant further admits that the said Delawares have not occupied said lands in common or in community of possession, but in severalty and individually, and defendant alleges that upon the death of an individual registered Delaware the said lands so severally and individually occupied and improved by him, being a portion of the national lands of the Cherokee nation, thereupon became free from all right or supposed right of any registered Delaware, or of any child, descendant, heir-at-law or personal representative of any such Delaware, to occupy or use the same in severalty, except such as belonged to them in common with all other citizens of the Cherokee nation.

Fifth. Answering the ninth paragraph, the defendant says that if the said Delawares have not wholly abandoned their tribal organization, and have maintained their tribal laws, customs and usages, such organization was not and is not such as existed amongst the Indian inhabitants of the United States, nor are said Delawares such as are known as and constitute an Indian tribe, but the said organization, laws, customs and usages have been preserved in a modified form, if at all, for convenience of transacting business with the Government of the United States, relating to the remnant of property still held or claimed by them as former members of the Delaware tribe, said organization, if existing, having no power or authority to manage, control or deal with the funds or lands of the Cherokee nation, or any part thereof.

Sixth. Defendant admits the allegations of the tenth paragraph of the petition.

Seventh. Answering the eleventh paragraph, defendant denies that the said Delaware Indians are legally and equitably entitled to the said 157,600 acres of land described in said paragraph, or any part thereof, except so far as each individual Delaware registered as aforesaid and now living may be entitled to occupy and enjoy 160 acres of the Cherokee national lands under the terms of the contract between the Delawares and the Cherokee nation as in said petition set forth, and to receive in any future allotment not less than 160 acres of said lands. And defendant denies that said 157,600 acres of land have been segregated as alleged, or that there was any power, authority or right vested in the registered Delawares, or any other person or persons, to segregate or set off the portion of the national lands of the Cherokee nation.

And further answering, defendant avers that if said 157,600 acres of land is set off or assigned to the said Delaware Indians, they will not be entitled to share in any part of the other Cherokee national lands. Defendant, however, believes and avers that the only true and legal allotment that can be made of the said national lands is to assign and set off to each member of the Cherokee nation an

equal portion thereof, reserving to the registered Delawares living at the time of such allotment at least 160 acres each.

Eighth. Answering the twelfth paragraph, the defendant denies that the said Cherokee nation has without right, authority or jurisdiction essayed to increase the numbers of said Cherokees,
26 or attempted to cut down and diminish the share which the said Delawares are entitled to have and receive in the funds and lands of the Cherokee nation, and alleges that if any other persons have been admitted to the Cherokee nation, or are authorized to share in the national funds and national lands of said nation, it has been done in accordance with and by virtue of the sovereign powers of said nation, properly and legally exercised under the constitution and laws of the nation, and this defendant alleges that it is not within the power and jurisdiction of this court to determine and adjudge how many there are of such persons entitled or not entitled to share in the national funds and national lands of said nation.

Ninth. Answering the thirteenth paragraph, the defendant denies that any persons not entitled thereto have heretofore participated in the division of the national funds of the Cherokee nation, or the Cherokee nation as a body and in its corporate capacity, or any individual Cherokees in official position in said tribe or nation, have wrongfully and without authority consented or agreed to the sharing in said funds by persons not entitled to share therein, or that said Delawares have been injured or damaged, or their individual shares diminished in the manner alleged in said petition, and defendant alleges that it is not within the power or jurisdiction of this court to have or order any accounting of moneys paid or distributed as alleged in said paragraph, or to order or adjudge that any moneys so paid out shall not be charged in proper ratio against the Delawares, or to order and adjudge that any payment whatsoever shall be borne solely by the members of said Cherokee nation other than said Delawares, or by the individual Cherokees consenting and participating in said payment, or to order or adjudge that the said Delawares may receive the part or share of such lands and funds which they would have received if it had not been for any payments or distributions of funds heretofore made.

Tenth. Answering the fourteenth paragraph, the defendant
27 denies that it has without right or authority, used its communal funds or expended the same wastefully and lavishly, as in said paragraph mentioned.

And defendant alleges that this court is without authority or power to direct an accounting of the moneys alleged to be unlawfully, wastefully and lavishly expended, or to direct that no part of the same shall be charged against the shares of the said Delawares, and that the whole thereof shall be charged against the shares of the said Cherokees or the members of the Cherokee nation other than the said Delawares, or that the said Delawares may receive the same part, share and proportion of the said lands and funds that they would have received if the payments and

expenses referred to in said paragraph had not been made and incurred.

Eleventh. Answering the fifteenth paragraph, defendant denies the allegations thereof, and alleges that this court is without power or authority to order an accounting of the moneys alleged in said paragraph to have been paid out and expended by the said Cherokees, or to make such order or decree as in said paragraph is prayed for. Further answering the twelfth, thirteenth, fourteenth and fifteenth paragraphs of said petition, defendant alleges that the individual Indians, known and designated for the sake of convenience as the Delaware Indians residing in the Cherokee nation, are each members of the Cherokee nation, and each of them of lawful age is a voter, and, in conjunction with the other members of the Cherokee nation, has from time to time participated in the election of the chiefs and national councils of said nation, and if any or all of the things alleged in said four paragraphs have been done, it has been through acts and proceedings of the said national council and approved by the said chiefs, and the said Delawares, being members of said Cherokee nation, have no right to complain thereof and this court is without power or authority to correct such misdoings, if any there be, and the said Delawares can alone secure redress, if
28 any, through petition to the proper authorities of the nation of which they are members.

And further the defendant avers that the funds and lands of the Cherokee nation are national funds and national lands, that they are not communal and national property, and no citizen of the Cherokee nation can have any division save the divided interest or share in said lands and funds so long as they remain national property, nor until the Cherokee nation shall, by a law of its national council, provide for the per capita distribution of the same.

Wherefore this defendant prays judgment that the petition be dismissed with its reasonable costs and expenses herein incurred.

WM. T. HUTCHINGS,
Attorney for Defendants.

Muscogee, Ind. Ter.

29 Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE Nation, as a Tribe and Individually; George Bullette, Henry Armstrong, John H. Secondine, John Young, John Sarcoxie, Jr., Individual Delaware Indians Residing in the Cherokee Nation, and the Business Committee of Such Delaware Indians, John Bullette and Richard C. Adams, Individual Delaware Indians Residing in Said Cherokee Nation and the Representatives of Said Delaware Indians and Said Business Committee, Suing on Behalf of Themselves and All Other Delaware Indians Now or Lately Residing in Said Cherokee Nation and the Children, Descendants, Heirs at Law, and Personal Representatives of All the Deceased Delaware Indians Whose Names Appear upon the Register of Delaware Indians Made in February, 1867, by John G. Pratt, the United States Indian Agent for the Delaware Indians, and on File in the Department of the Interior of the United States, and Known as the "Delaware Register," Plaintiffs,

against

THE CHEROKEE NATION, Defendants. } No. 21139.

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34 *Deposition of Simon Secondine, for Claimants, Taken at Muscogee, Indian Territory, on the 6th Day of December, A. D. 1898.*

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness, having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the case on which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Please tell your name, age, occupation, and place of residence.

Answer. My name is Simon Secondine; I am 45 years of age; I am a farmer and live on California creek, 5 miles northwest of Nowata.

Question. Mr. Secondine, you are one of the plaintiffs in this suit?

Answer. Yes.

Question. Please state when you first knew of the agreement of 1867, entered into between the Delaware and Cherokee Indians, referred to in the petition.

Answer. I don't know. I have heard the old folks talking of it.

Question. Well, you were one of the registered Delawares in Kansas, were you not?

Answer. Yes, sir.

Question. And you remember when they left there?

Answer. Yes.

Question. And you remember that before they left this agreement was being talked about amongst the people?

Answer. Yes, sir.

Question. What was your father's name, Mr. Secondine?

Answer. James Secondine.

Question. Did he hold any position in the Delaware nation?

Answer. He did before he died.

Question. What position was that?

Answer. Chief.

Question. Was he a member of the council?

Answer. He died up in Kansas.

Question. In Kansas, before he died, was he a member of the Delaware council?

Answer. Yes.

Question. How did the Delaware people, the members of the

Delaware tribe, know about this agreement referred to in the petition?

Answer. Of course they had a council to tell the people.

Question. They heard of it through their chiefs?

Answer. Yes.

Question. Did the chiefs explain it to the people?

Answer. Yes.

Question. Was it talked about amongst the people?

Answer. A great deal; yes, sir.

Question. You were there and knew many of the Delawares?

Answer. Yes.

35 Question. You had many friends and acquaintances amongst them?

Answer. Yes.

Question. Did you hear them talking about it?

Answer. Yes.

Question. As far as you can say, it was generally known amongst them?

Answer. Yes.

Question. Can you explain what the chiefs explained this agreement to be; what they told them it was?

(Objected to by counsel for defendants, Mr. Hutchings, because the question is incompetent to vary written contract by such evidence; said suit being to enforce the contract and not to reform it.)

Answer. The agreement was that they bought 160 acres of land in the Cherokee nation.

Question. Did they say anything about their having any other rights besides, after?

Answer. Yes, sir.

Question. What did they say about that?

Answer. They said they had bought everything; put in their *pro rata* share of money in the general funds, also in the school funds and the orphan funds and the asylum funds.

Question. Did they say whether or not they would have equal rights with the Cherokees?

Answer. Yes, sir.

Question. How did the chiefs explain the right the Delawares would have in this land? What kind of right did they say they would have?

(Counsel for the defendants objects to this question also, for the reasons stated above, that the entire contract is in writing and can not be varied or contradicted before evidence.)

Answer. They said we buy 160 acres, also a communal right with the Cherokees.

Question. Well, I must explain to you, Mr. Secondine, that the Cherokees claim in their petition filed in Washington that, according to the agreement, when a Delaware died the land would revert, go back to the Cherokees; that a Delaware had only the right to use it

for his life. Now, I ask you whether the chiefs of the Delawares explained to the Delaware people that this was the agreement, or whether they explained it differently?

Answer. Well, I did not hear them say that it would revert back to the Cherokee nation at all.

Question. Did they explain who would own the land when a Delaware would die? Who would own it?

Answer. Of course, the children.

Question. The children?

Answer. Yes.

Question. And that was the way they explained it to the people?

Answer. Yes.

Question. Did the Delaware chiefs say the Delawares would get the same rights and title to this 160 acres which each one was to receive as the Cherokees had, or did they say they would only have the use of it?

Answer. Oh, no. He was to get 160 acres, even although the Cherokee got only 40, and besides he was to get Cherokee rights.

36 Question. What I am trying to get at is this 160 acres which he was to get. How were you to own it—the same as a Cherokee or differently?

Answer. He was to locate it; pick out a claim and settle on it.

Question. Did not they understand that they would get as much right to it as a Cherokee had?

Answer. Yes, sir.

Question. Now, you left Kansas in 1868?

Answer. Yes, sir.

Question. Before you left the Indian agent among the Delawares made a roll of everybody that was to come here to the Indian Territory?

Answer. Yes.

Question. After that roll was made, and before they all got here, did any of them die or disappear?

Answer. Yes; there was some, but I could not tell how many.

Question. Well, were there 50?

Answer. I could not tell you.

Question. You don't know the exact number?

Answer. No.

Question. Well, do you remember whether or not, after they got here in the winter of 1869, any of them died?

Answer. Yes, sir; a great many. My mother died, and my grandmother; also several in my family.

Question. That year was very hard on the Delawares?

Answer. Yes, sir, it was.

Question. You think as many as 200 died?

Answer. Could not tell how many.

Question. Well, could you approximate? What is the nearest your recollection would be? Between one and two hundred?

Answer. Somewheres along there.

Question. You remember the Delawares paying the full amount for the land in 1869?

Answer. Yes.

Question. Now, knowing that so many Delawares had died, why did they not protest against paying the full amount?

Answer. I suppose they agreed to buy so much land and to pay so much for it.

Question. When you came to the Indian Territory among the Cherokees, did you select your land?

Answer. Yes, sir, I got a farm.

Question. What did you do to it? Did you improve it—make any changes?

Answer. Yes; built houses; put out orchard; put fences around the farm.

Question. You are acquainted with the value of farm improvements in the Indian Territory, are you not?

Answer. Yes, sir.

Question. You have been a farmer there from 1868?

Answer. Yes, sir.

Question. What was the value of the improvements you put up, approximately?

Answer. About $3,000.

37 Question. Did your neighbors, the Delawares, get land and improve it the same as you did?

Answer. Yes.

Question. Do you remember the form of government that the Delawares had in Kansas?

Answer. Chiefs and councilors.

Question. And they retained that form of government among the Cherokee Indians up to the time of the death of Chief Charles Journeycake?

Answer. Yes, sir; he was our chief.

Question. Up to the time of his death they were governed the same as in Kansas?

Answer. Yes.

Question. When he died there was a change made?

Answer. Yes; there was 5 of a committee appointed to act in place of the chief.

Question. And this committee was called the business council.

Answer. Yes.

Question. And this committee does the same as the chiefs and council used to do in Kansas?

Answer. Yes.

Question. Do you know anything of the Delawares building churches and schools?

Answer. Yes.

Question. Have they done that?

Answer. Yes, sir; they have built two good churches.

Question. Did the Delawares or Cherokees build them?

Answer. The Delawares.

Question. How about the schools?
Answer. We built them.
Question. You remember there were two on California creek and two on Caney?
Answer. Yes; and one on Lightning creek.
Question. Did the Delawares or Cherokees build them?
Answer. The Delawares.
Question. You are well acquainted among the Delawares. Do they all live together or does each one own his own farm?
Answer. Each one owns his own farm.
Question. Separate from the rest of them?
Answer. Yes.

Cross-examined by COUNSEL FOR DEFENDANTS:

Question. I understood from you, Mr. Secondine, that you paid into the Cherokee treasury the amount of $1 an acre for 160 acres each of land for each Delaware that was registered, and that you paid also into the Cherokee treasury an amount that would be proportionate to the entire Cherokee national fund—that is, make the Delawares equal per head with each Cherokee citizen. What else did you buy?
Answer. I bought 160 acres of land.
Question. I asked you as above, What else did you buy?
Answer. A right, I expect.
Question. What did you pay for that right?
Answer. I paid in my part or share of money. That is the way I understood with the Cherokees.
38 Question. Don't you know that at the time this agreement was made that the Cherokees had about 1,000 acres of land apiece?
Answer. Yes.
Question. Then what did the Delawares pay them to give you an equal share in that 1,000 acres of land or any more than your 160 acres?
Answer. I don't know.
Question. Have you ever read the agreement between the Delawares and the Cherokees?
Answer. Yes, sir; I have read it.
Question. All of that agreement was put in writing, so far as you know, was it not?
Answer. Yes.
Question. How old were you when these negotiations were going on, Mr. Secondine?
Answer. I was going on 15.
Question. Who did you ever hear talking about it?
Answer. I have heard different parties. I went to school at the agency at the mission, and I often heard them speak about it. I was interested about them going to a new country, like a boy would be.

Question. Did they tell you that if you would buy 160 acres that those Cherokees would throw in 840 acres more?

Answer. They did not tell me at all. I have heard the men talking about it amongst themselves.

Question. You never did know what they agreed to until you got old enough to read the agreement?

Answer. Only what I have heard them say.

Question. Have not the Delawares exercised the same rights and suffrage in the Cherokee nation—elected members to the senate and council just the same as all other parts and people of the Cherokee nation?

Answer. Yes, sir; they have elected one senator that I know of—that is Mr. Bullette—and several councilors.

Question. Have the Delawares, ever since they became a part of the Cherokee nation, ever held formal election for council or chief?

Answer. Amongst themselves?

Question. Yes, sir.

Answer. They appointed a committee.

Question. Well, held a form of election for council and chief?

Answer. Yes; they formed a council.

Question. I say a formal election?

Answer. Among themselves they held a council and picked out those men.

Question. Did they ever hold a council or elect a council for any other purpose than to select a business committee with which to deal with the Interior Department of the Government?

Answer. Anything that would come before the Delaware tribe in the way of business would go to the business committee.

Question. Have the Delawares, ever since they became a part of the Cherokee nation, attempted to enact, or have they ever enacted, any laws of their government as a people distinct and separate from the Cherokees?

Answer. Not that I know of.

Examination concluded.

39 It is stipulated and agreed by and between Marx E. Harby, as counsel for plaintiffs, and William T. Hutchings, attorney for defendants—

1. That the above questions were duly, properly, and actually put to Simon Secondine, the witness above named, and the corresponding answers were actually made by him.

2. That the said questions and answers be read as testimony and evidence in this case, subject only to the objections above set forth.

3. That all objections to the lack of witness not having signed this testimony be and they are hereby waived.

4. That the testimony of the witness be not read over to him, nor be signed by him, and that said testimony and evidence were taken, and the reading of the testimony over to the witness, and his signature, were waived pursuant to agreement between the parties hereto,

and all statutes and rules of procedure to the contrary are hereby expressly waived.

Dated at Muscogee, Ind. T., December 6, 1898.

MARX E. HARBY,
Counsel for Plaintiffs.
WILLIAM T. HUTCHINGS,
Attorney for Defendants.

I do hereby certify that the foregoing stipulation was duly and properly signed and agreed to by William T. Hutchings, attorney for the defendants, and Marx E. Harby, counsel for the plaintiffs, both personally known to me, and known to me to be the persons who executed the same; that the witness, Simon Secondine, was duly and properly sworn, and that the answers to the questions put to him were taken down in his presence.

Dated at Muscogee, Ind. T., December 6, 1898.

[SEAL.] D. J. BALL,
Notary Public in and for the Northern Judicial District of the Indian Territory.

Deposition of John Bullette, for Claimants, Taken at Muscogee, Ind. T., on the 6th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the case on which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Please give your name, age, occupation, and place of residence.

Answer. My name is John Bullette; I am 47 years of age; I live at Claremore, Ind. T., and I am a farmer.

Question. I want to know when you first knew you were going to move over here from Kansas?

40 Answer. I first knew that I was going to move here, to the best of my recollection, about 1867.

Question. Now, you were part of the Delaware tribe in Kansas before you came here to the Territory?

Answer. Yes, sir.

Question. And you remember the Delawares talking about this agreement, which is of 1867, between the Delawares and Cherokees, which is set out in our petition?

Answer. Yes, sir.

Question. And how did you know of it—from the chiefs and council?

Answer. Who—the Delawares?
Question. Yes.
Answer. Yes, sir.
Question. And they talked about it amongst themselves?
Answer. Yes, sir.
Question. What did they say they were going to get by this agreement?

(Counsel for defendants objected to the question because the consideration that all matters pertaining to the agreement were reduced to writing and can not be varied.)

Answer. Well, they were to get the land they paid for and Cherokee citizenship.
Question. How much land to each one were they to get?
Answer. One hundred and sixty acres.
Question. What sort of right was each Delaware to have in this land?
Answer. Full Cherokee right.
Question. According to what they said as to this right, what would happen to this land in case a Delaware was to die?

(Same objection to this question as the one above.)

Answer. They considered it an absolute purchase of the land.
Question. So that if you should die, what then?
Answer. They supposed it would by theirs—belong to the estate.
Question. Is this the first time you heard of it when the suit was brought?
Answer. No, sir; this is not the first time. It has been talked all over the country.
Question. Was anything to the contrary spoken of about the time the land was paid for?
Answer. I guess not.
Question. Now, you understood that in addition to getting this land they were to get all the rights in the Cherokee nation that a Cherokee citizen has?
Answer. That was my impression and of my old uncle, John Conner, the chief, and I was at his house all the time.
Question. Is this the Captain Conner who was one of the parties who signed that contract?
Answer. Capt. John Conner I refer to. He was my uncle—my mother's brother.
Question. And he said, according to this agreement, each would get absolute right to 160 acres of land and also all the rights that pertain to Cherokee citizenship?
Answer. Yes.
41 Question. You understood that in addition to paying for this land they also paid a certain sum into the Cherokee funds?
Answer. He said they had to pay that extra money to get a Chero-

kee right. It was the second payment, taken together with the other, that gave them all those rights.

Question. You had considerable acquaintance amongst the Delawares at that time?

Answer. Well, I was young at that time, Mr. Harby, and I only knew what I heard.

Question. You were well acquainted amongst the Delawares?

Answer. I knew a great many Delawares.

Question. And did they all understand the agreement in this way?

Answer. That seemed to be the general impression in the nation. I will just remark right here that that was an inducement for them to come here, because a great many of them did not want to come. They were accustomed to hold land up there in severalty. They had to give up the land when they came here, and they wanted to distinctly understand that they would get land when they came here.

Question. And they did so understand it?

Answer. They certainly did, or they never would have moved here.

Question. Before the Delawares left Kansas and came to the Indian Territory the agent there made a roll of all that were coming?

Answer. Yes. I did not know of him making the roll, but I heard afterwards, and I have seen it since.

Question. Anyway, when the Delawares were coming over here from Kansas, did not a good many of them die before they got here?

Answer. From all accounts there was quite a number died. I don't remember of any particular ones that died that were on the roll, and while there I guess I paid no particular attention.

Question. The general report amongst the Delawares is that quite a number of them died?

Answer. Yes.

Question. Now, this money was paid about May, 1869. Do you remember that before May, 1869, a good many of the Delawares died, not being acclimated?

Answer. Oh, yes; there was quite a number. I happened to be at home when the Cherokee notification came to Capt. John Conner that the money had not been paid and must be paid.

Question. After that it was paid, was it not?

Answer. I don't know about that; I suppose everything went off satisfactorily after that.

Question. Before that notification a good many died?

Answer. Yes.

Question. About how many—150, 200, or how many?

Answer. Yes; all of that.

Question. About how many?

Answer. Well, I believe I would be safe—I just imagine the number about 100 persons from 1867 to 1869, and I know there must certainly be more than that.

Question. Now, why did not the Delawares object to pay all of this money when so many of them had died?

Answer. Well, now, about that: they supposed, no doubt, that it was a matter of contract. They never protested against the deaths, and nothing like that.

42 Question. Are the heirs of those dead people living on the land now?

Answer. Most of them.

Question. When you came to the Indian Territory you got your land, did not you?

Answer. Yes, sir.

Question. After a time did you improve it in any way?

Answer. Yes; have been ever since I settled there.

Question. What is the nature of the improvements?

Answer. Houses, fences, etc.

Question. About what is the value of the improvements?

Answer. I suppose my improvements are worth, seven, eight, or ten thousand dollars.

Question. Are you acquainted with the value of improvements?

Answer. Yes.

Question. You have been a farmer since 1868?

Answer. Yes.

Question. And from that experience you base your estimate of the value of the improvements?

Answer. Yes, sir.

Question. You have been round amongst the Delawares in the Indian Territory, have you not?

Answer. Yes.

Question. Have you held any position in the Indian Territory?

Answer. I have held the office of district clerk, and I have held the position of prosecuting attorney for one of the districts.

Question. Are you a member of the business council of the Delawares?

Answer. Yes, sir; I am clerk of the business council of the Delawares.

Question. You are well acquainted amongst the Delawares?

Answer. Yes.

Question. Have been round amongst them considerable?

Answer. Yes, sir.

Question Have seen their farms and buildings?

Answer. Yes.

Question. Is the land improved or unimproved?

Answer. Generally improved. The Delawares have generally improved their lands.

Question. Do you know of any Delawares who took up land- that have failed to improve them?

Answer. No; I don't believe I do. They have all more or less improvements.

Question. Do you remember what form of government the Delawares had amongst themselves in Kansas?

Answer. They had council, chief, and clerk.

Question. They kept that up until the death of Chief Journey-cake in the Cherokee nation?

Answer. Yes.

Question. When did he die?

Answer. He died in the Indian Territory in '95.

Question. After the Delawares came among the Cherokees?

Answer. Yes.

Question. And after he died they elected a business council, did they not?

43 Answer. Yes.

Question. And this business council exercises the same power as the chief and council used to do?

Answer. Supposed to do.

Question. Do you hold your land separate from the rest of the Delawares, or do you hold it in common with them all?

Answer. No. I hold my farm individually.

Question. Every other Delaware that you know of holds his land the same way?

Answer. Yes, about the same as I hold mine, individually.

Question. Do you know of any Delaware Indian living who was a chief of the nation or a counselor of the nation in Kansas?

Answer. No, sir; I do not.

Question. They are all dead?

Answer. I think so. John Conner, Sarcoxie, Charles Journey-cake, and Andrew Miller and all the rest are dead. I do not remember of any that are alive.

Question. It was a habit and custom amongst the Delawares, when they had something of importance to be considered by the nation, for the chiefs and council to make it known to them?

Answer. Oh, yes.

Question. You might say the chiefs and council were the heralds of the people?

Answer. Yes.

Question. And there was constant visitation going on amongst them?

Answer. Yes, there were occasional meetings to talk those matters over.

Question. The people throughout the nation visited like other people do?

Answer. Certainly.

Question. When this agreement was put before the people, the chiefs told the people what the terms of the agreement were and explained it to them?

Answer. Yes.

Question. A majority of the people understood the explanation?

Answer. A great many of them were indifferent then and are yet about what is going on. They rely upon the leading ones of the tribe to see that everything goes on right—how it is conducted.

Question. Now, when they had these talks on the subject of this

agreement, did they speak about what title the Delawares were to get to this land?

Answer. They certainly expected a right and title to the land.

Question. What kind of title? The same as the Cherokees?

(Counsel for defendant objects to this question on the ground that the agreement speaks for itself.)

Answer. They fully believed that their children would inherit it. They occupied separate allotments in Kansas and it was a matter of inducement for those people to come down here and give up their allotment there for the price paid to them, $2.50 per acre. There is a good many of them were led to believe that they were paying $1 an acre for 160 acres. They gave up 80 acres in Kansas for $2.50 an acre to get 160 acres at $1 an acre.

44 Question. What did they get for their land in Kansas?

Answer. $2.50 per acre.

Question. And they thought they were to own 160 acres here just the same as they owned 80 up there?

Answer. That was the understanding. The understanding was that, in addition to that, they paid the sums of money mentioned in the contract which gave them equal rights and interest with the Cherokees in everything pertaining to the Cherokee nation. That was the understanding.

Question. You understood they had equal rights with the Cherokees?

Answer. It made them equal with Cherokees in every respect.

Cross-examined by WILLIAM T. HUTCHINGS, counsel for defendants:

Question. Do you know about how much land the Cherokees owned *per capita* at the time the Delawares bought an interest in the nation?

Answer. I know about how much they claimed.

Question. How much?

Answer. They laid claim to something like 5,000,000 acres.

Question. Your people bought and paid for 160 acres apiece at $1 per acre, did they not?

Answer. Yes, sir.

Question. And they paid into the Cherokee national fund an amount that would make them equal with other Cherokee citizens so far as that fund was concerned, did they not?

Answer. Yes, sir.

Question. What did your people give to entitle them to share in that extra number of acres?

Answer. They did not pay anything more.

Question. Well, I ask you did you expect to get that extra 840 acres of land—when would you pay for it?

Answer. Well, we paid $121,000 odds into the common fund.

Question. The nation could not get any benefit at all from that money, could it?

Answer. Well, it was a common fund.

Question. You contributed that money so the Government was to look after and give you schools and various things like that, so that you were not to get anything from the Cherokee nation for that except what you would get afterwards in case of dissolution of partnership?

Answer. Well, the $121,000 odds was to make the Delawares equal with the Cherokees.

Question. Equal in money, though?

Answer. I don't understand it that way.

Question. Now, Mr. Bullette, when you and all the Delawares that you know settled on land in the Cherokee nation, were you at all particular whether it was 160 acres of land or whether it was 500?

Answer. No, sir; we fell along with the rest and went to monopolizing.

Question. In other words, you made your settlement under the laws of the Cherokee nation, did you not? And settled just as much as you were able to inclose?

45 Answer. Yes.

Question. And then claim your quarter mile limit as Cherokee citizens besides?

Answer. Yes.

Question. And is not this claim of 160 acres a recent development altogether on the part of the Delawares?

Answer. It is a recent move to secure their allotment.

Question. Did not your people draw their share in the *per capita* payment of the proceeds of the sale of the Outlet?

Answer. Well, now, I would not say whether they did or not, but I will say they drew their *per capita* as other Cherokees did.

Question. Which amounted to how much?

Answer. I could not say.

Question. Was not the amount they drew over $200 apiece?

Answer. Oh, yes.

Question. Did not this sum aggregate more to your people than the amount of money they paid into the national fund to make them equal in said fund with other Cherokee citizens pursuant to the original agreement with the Cherokees?

Answer. Yes; I presume it was more in the aggregate, not counting interest or anything like that.

Question. Then your people have already, if they were only made Cherokees, with the same rights as Cherokees, made a most excellent profit on their investment?

Answer. No; not exactly, Mr. Hutchings, because they had to sacrifice valuable land and valuable improvements up in Kansas.

Question. Have the Delawares ever kept up any organization for the political government of their people since they became a part of the Cherokee nation other than a business committee to attend to their individual affairs with the Government?

Answer. They have kept up an organization of their own.

Question. That's what I mean. Have they made any laws?

Answer. No; they have got up an organization for the management of their business affairs with the United States Government.

Question. Have they not always participated in the regular Cherokee elections, voted for chiefs, and members of both houses of the council, judges, and so forth?

Answer. Yes, sir.

Question. Have not the Delawares always had the same rights to the same representation in the council of the nation, and run their own office in the Cherokee nation, except that of chief, that any other citizen of the Cherokee nation had?

Answer. They always had a right under the law but they have never had the same number or the same representation that the Cherokees had.

Question. Have you not yourself sat as a member of the council of the Cherokee nation? And if so, state how many terms.

Answer. Yes; one time.

Question. Do you know Mr. J. E. Campbell?

Answer. Yes.

Question. And Jake Bartles?

Answer. Yes.

Question. And J. G. Barndollar?

46 Answer. Yes.

Question. And are they not citizens of the Cherokee nation by virtue of their marriage to Delaware women?

Answer. There is no question about J. E. Campbell. I will say that much.

Question. Is there any about Barndollar?

Answer. He has been exercising rights of citizenship, and are no doubt considered citizens. They married Delawares that were admitted specially by the Cherokee council. Bartles and Barndollar married women that were not citizens until they were readmitted to citizenship.

Question. Has Mr. Campbell ever been guided by the 160-acre limit in making improvements on the public domain in the Cherokee nation?

Answer. I think not.

Redirect examination by MARX E. HARBY:

Question. I understand that there was a payment made to the Delawares out of some Cherokee funds. State the circumstances of the Delawares obtaining that payment which you mentioned on cross-examination.

Answer. That is in regard to that $295.75, if that be the correct amount?

Question. Yes. State the circumstances of that.

Answer. Well, I will say this, that we had to force the Cherokees to pay this.

Question. In what way?

Answer. Before the Court of Claims.

Question. You were asked if this claim that the Delawares make to the individual right to 160 acres absolutely is a new thing with the Delawares. You answered that this move was now. You refer in that the bringing of the suit was new, do you not?

Answer. What I wanted to convey was that the Delawares might have long since demanded their 160 acres of land had the opportunity been given them in the way of surveys to secure the land, and it is only recently that surveys have been made which would enable them to do so, and they have been more or less restless since they have been made to secure the land. Their idea was that it was not capable of division until this recent survey was made, to avail themselves of what they deemed their rights.

Question. Please say whether you know of any other matter relative to this claim.

Answer. No there is nothing I can think of that is material in addition to what I have already answered.

Examination concluded.

It is stipulated and agreed by and between Marx E. Harby as counsel for plaintiffs, and William T. Hutchings, attorney for defendants:

1. That the above questions were duly, properly, and actually put to John Bullette, the witness above named, and the corresponding answers were actually made by him.

2. That the said questions and answers be read as testimony and evidence in this case, subject only to the objections above set forth.

3. That all objections to the lack of witness not having signed this testimony be and they are hereby waived.

4. That the testimony of the witness be not read over to him nor be signed by him, and that said testimony and evidence were
47 taken, and the reading of the testimony over to the witness and his signature were waived pursuant to agreement between the parties hereto, and all statutes and rules of procedure to the contrary are hereby expressly waived.

Dated at Muscogee, Ind. T., December 6, 1898.

MARX E. HARBY,
Counsel for Plaintiffs.
WILLIAM T. HUTCHINGS,
Attorney for Defendants.

I do hereby certify that the foregoing stipulation was duly and properly signed and agreed to by William T. Hutchings, attorney for the defendants, and Marx E. Harby, counsel for the plaintiffs, both personally known to me, and known to me to be the persons who executed the same; that the witness John Bullette was duly and properly sworn, and that the answers to the questions put to him were taken down in his presence.

Dated at Muscogee, Ind. T., December 6, 1898.

[SEAL.] D. J. BALL,
Notary Public in and for the Northern Judicial District of Indian Territory.

Deposition of James Wilson, for Claimants, Taken at Muscogee, Ind. T., on the 6th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the case on which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Give your name, age, residence, and occupation.

Answer. My name is James Wilson; I am 53 years of age; I live 3 miles below Bartlesville, and I am a farmer.

Question. Were you in Kansas at the time of this agreement between the Delawares and the Cherokees when it was being considered?

Answer. Yes, sir; I was not with the treaty party, but I was in the State of Kansas.

Question. Did you talk with Chief Journeycake about it?

Answer. Yes; I had talked with Mr. Journeycake about the agreement.

Question. What did Chief Charles Journeycake tell you about the agreement?

Answer. Mr. Journeycake told me that there was an agreement between the Cherokee nation and the Delawares. That the Delawares were to buy 160 acres of land and pay for it to the Cherokees.

Question. Did Chief Journeycake tell you that after the Delawares had bought this land that they were to have it as their own?

Answer. Yes, sir; as our own land.

Question. Did Chief Journeycake tell you that when a Delaware died his children would have the land which they bought?

48 Answer. Mr. Journeycake told me that they bought this land from the Cherokee nation for the present generation, and on top of that they bought the Cherokee right for the coming generation.

Question. When a Delaware died would the children have the same right in the land that the father had?

Answer. I don't understand whether the children had as much right as the father had, but the way I understand it the land I had bought myself would go to my heirs whenever I died.

Question. Is this what you mean by your answer to the question just before the last question?

Answer. Yes.

Question. Did you come here with the rest of the people to get your land?

Answer. I came down here with part of the Delawares. They did not come down here all together.

Question. Before they came here did not the Indian agent make a roll of those that wanted to come?

Answer. Yes; there was a roll prepared for those that were coming and a roll for those that were to stay there.

Question. After that roll was made, before the Delawares got to their land in the Cherokee nation, did you not hear it being talked about that a good many of the people that were on the roll died?

Answer. Yes. That was the talk, but I don't know if I could call names, or how many there was died before they came into the Cherokee nation.

Question. When the Delawares paid for this land why did they not protest against paying for the ones that died?

Answer. The way I understood it that that land would go to the heirs even if the parties were dead.

Question. When you came here did you take your land and make your improvements on it? If so, what improvements?

Answer. Yes, when I came to the Cherokee nation I picked me a claim and built me a log-cabin house.

Question. Have you since improved your land?

Answer. I sold my first farm and went over on Caney, where I live now.

Question. What improvements are there on your Caney farm?

Answer. I built me a house; have got nursery, shubbery, and I have got 200 apple trees set out, and 400 grapevines. I have done the best to improve the land, supposing that it was mine.

Question. What is the value of your improvements?

Answer. They are worth about a couple of thousand dollars at least.

Question. Did you understand from Chief Journeycake that, in addition to getting this land, each Delaware that came to the Cherokee country would receive all the rights of the Cherokee citizens, the same as the other Cherokees?

Answer. Yes, sir; that is the way I understood it.

Question. And by equal rights you understand every right a Cherokee has of any kind whatever?

Answer. Yes.

Question. The Delawares in Kansas had a form of government. They had chiefs and council; is that so?

Answer. Yes.

Question. Did they not keep up that form of government
49 after they left Kansas and when they came into the Indian Territory, up to the time of the death of Chief Journeycake?

Answer. That was kept up until in the distribution of the general fund of the Delawares. They had a chief and council until then.

Question. They have now a business committee which does the same thing as the chiefs and council used to do?

Answer. Yes; they tried to go ahead without a leader and could not do a thing; finally they elected a committee to do business for them.

Question. Do you hold your farm as your own, separate from anybody else?

Answer. Yes; just me and my family.

Question. Do the other Delawares hold their's in the same way?

Answer. I suppose they do.

Question. Are you well acquainted amongst the Delawares? Do you know many of them?

Answer. Yes; I am well acquainted with a good many of the Delawares but I don't know anything about their business.

Question. You mean you don't know anything more than you see?

Answer. Yes.

Question. Did you not say that each one keeps his farm to himself and uses it for himself and family?

Answer. Yes.

Cross-examined by WILLIAM T. HUTCHINGS, counsel for defendants:

Question. When you settled in the Cherokee nation, how much land did you settle on?

Answer. I suppose I settled on 160 acres and then a quarter of a mile all around that.

Question. Have you ever taken in any more than 160 acres?

Answer. No.

Question. Did all the Delawares try and settle on 160 acres apiece when they came to the Cherokee nation?

Answer. I did not know what the rest of them were doing, but I suppose they were doing the same as myself.

Question. How much did old man Journeycake inclose and settle on, at the start and at his death?

Answer. I don't know. He had a big farm.

Question. Did he not have a heap more than 160 acres?

Answer. Oh, yes.

Question. Did he not have a heap more than 500 acres?

Answer. I could not tell whether there was 400 or 500 acres. It is a large field.

Question. When was the last time you ever voted for chief of the Delaware people?

Answer. I don't know as the Delawares ever elected a chief. It seems it used to run in the family.

Question. Were not you and your people always governed by the laws passed by the Cherokee council?

Answer. Yes.

Question. When anybody of the Delawares died, did not the Cherokee courts administer on the estate?

Answer. Yes.

Question. And was not their property, including the im-
50 provements, divided among the family and descend to them under the laws of the Cherokee nation?

Answer. Yes; that's right.

Question. Did you ever talk with any of the parties who signed the agreement between the Delawares and Cherokees except Chief Journeycake?

Answer. Yes; I have heard most of them explain this agreement.

Question. I mean of those that signed it?

Answer. Yes; when they were living, I don't know how many years ago.

Question. Was it since they moved to the Cherokee nation?

Answer. Yes.

Question. Was all the talk that you have heard about it since you have moved to the Cherokee nation?

Answer. No, not altogether; only when the Cherokees mistreated the Delawares.

Question. What did you hear them say about it before the agreement was made?

Answer. Really, I was not paying any attention to what they were saying, only I learned that I had to come down here in the Cherokee nation.

Question. What you heard them say was after the agreement was made?

Answer. Before the agreement was made I knew the Delawares sent a delegation down here to look at the country and after they got back to Kansas they sent a delegation to Washington to close a trade with the Cherokees.

Question. Was it after that that Journeycake and those men told you what the agreement was?

Answer. I never knew anything about the agreement until Journeycake told me that there was an agreement made between the Cherokees and the Delawares.

(Counsel for the defendant objects to all the foregoing answers and evidence of the witness with reference to the agreement between the Delawares and Cherokees in controversy and asks that the same be withdrawn and stricken from the record because his information came from an agent of the Delawares after the execution of his agency and after the contract had been made and fully completed.)

Redirect examination by MARX E. HARBY:

Question. Now, Mr. Wilson, you knew when this party called a delegation went to the Indian Territory to look at the land that it was to be sent there for purposes which were afterwards expressed in this agreement?

Answer. No; I don't know anything about it at all. I was paying no attention. I was young and the power was in the hands of the chief and council.

Question. When you spoke of Chief Journeycake, did you not know that the agreement had not actually been signed, but that he was telling you what the Cherokees wanted the Delawares to agree to?

Answer. Mr. Journeycake told me that the Cherokees would not sell a tract of land in here, but that we could buy 160 acres of land.

Question. After Journeycake told you that, did not the Delawares send a delegation back to Washington to sign the agreement?

51 Answer. No; the way I understood it the treaty and agreement was already signed up.

Question. When the Delaware father came to the Cherokee nation, if he had a wife and children, was it not the custom to take up, in addition to his own 160 acres, 160 acres for each child and 160 acres for his wife in addition to his own?

Answer. No. When the Delawares came here they went to work and fenced what they could. There was none of them fenced up to 160 acres at the start. If they did, it was very few of them.

Question. Since they were able, did they not of their own accord take up 160 acres for each of the family?

Answer. Yes.

Recross-examination by WILLIAM T. HUTCHINGS, counsel for defendants:

Question. Did you know that the question of 160 acres never entered into the mind of the Delaware at any time when he made his improvement, and that he just improved as much as he was able to, regardless of the amount?

(Counsel for the plaintiffs objects because the question calls for the witness's construction of what was in another's mind and demands that he give as evidence the conclusion arrived at.)

Answer. They may not have thought about the 160 acres when they started their improvement, but after the Cherokees mistreated them then they wanted what they were entitled to.

Question. Do you know of anything of interest to the claimants in this case?

Answer. You might get some evidence from John Willey. He has been interpreter for those agents ever since he was a boy.

Examination concluded.

It is stipulated and agreed by and between Marx E. Harby, as counsel for plaintiffs, and William T. Hutchings, attorney for defendants—

1. That the above questions were duly, properly, and actually put to James Wilson, the witness above named, and the corresponding answers were actually made by him.

2. That the said questions and answers be read as testimony and evidence in this case, subject only to the objections above set forth.

3. That all objections to the lack of witness's not having signed this testimony be, and they are hereby, waived.

4. That the testimony of the witness be not read over to him nor be signed by him, and that said testimony and evidence were taken, and the reading of the testimony over to the witness and his signa-

ture were waived, pursuant to agreement between the parties hereto, and all statutes and rules of procedure to the contrary are hereby expressly waived.

Dated at Muscogee, Ind. T., December 6, 1898.

MARX E. HARBY,
Counsel for Plaintiffs.
WILLIAM T. HUTCHINGS,
Attorney for Defendants.

I do hereby certify that the foregoing stipulation was duly and properly signed and agreed to by William T. Hutchings, at-
52 torney for the defendants, and Marx E. Harby, counsel for the plaintiffs, both personally known to me and known to me to be the persons who executed the same; that the witness James Wilson was duly and properly sworn, and that the answers to the questions put to him were taken down in his presence.

Dated at Muscogee, Ind. T., December 9, 1898.

[SEAL.] D. J. BALL,
Notary Public in and for the Northern Judicial District of the Indian Territory.

Deposition of Mary E. Armstrong, for Claimants, Taken at Nowata, Ind. T., on the 7th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to this case in which she is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Now, Mrs. Armstrong, will you please give your name, age, residence, and present occupation?

Answer. My name is Mary E. Armstrong; I am 60 years of age; my home is 1 mile north of Coody's Bluff; I run a farm.

Question. Who was your father, Mrs. Armstrong?

Answer. My father was Rev. Charles Journeycake, the last and late chief of the Delawares.

Question. When did he die?

Answer. He died in January, 1895.

Question. How long did you live with him?

Answer. I lived with him until I married.

Question. When was that?

Answer. I was married in 1853.

Question. In 1853?

Answer. Yes, sir.

Question. You lived in Kansas before you came to the Indian Territory?

Answer. Yes, sir; I was born in Kansas.

Question. You were one of the Delawares on the reservation in Kansas?

Answer. Yes, sir.

Question. Were you acquainted amongst the Delawares?

Answer. Yes, sir; pretty well acquainted.

Question. Do you remember when a delegation of the Delawares returned from Washington to Kansas in the year 1866?

Answer. Yes, sir.

Question. And what was the purpose of the delegation?

Answer. Well, there had been several delegations before; but that time, I think, was for the purpose of making arrangements to come to the Territory.

Question. Did that delegation make any report when they returned from Washington?

Answer. Yes, sir; they did.

53 Question. What did they report?

(This question is objected to by counsel for the defendants as incompetent, irrelevant, and immaterial.)

Answer. I don't just remember.

Question. Well, generally, what did they report as to the agreement that was offered to them by the Cherokees at Washington? Did they report anything as to an agreement?

Answer. Oh, yes; they reported an agreement. Their business first was to dispose of the land that the Delawares had in Kansas.

Question. The Delawares owned considerable land in Kansas?

Answer. Yes, sir.

Question. And the Government of the United States wanted the Delawares to sell that land?

Answer. Yes, sir.

Question. Each Delaware owned how many acres?

Answer. Eighty acres.

Question. What was the price the Government was to give them for that 80 acres?

Answer. They were to get $200 for the 80 acres. That was what they got?

Question. That is $2.50 an acre?

Answer. Yes, sir.

Question. Do you remember when the agreement with the Government was concluded?

Answer. Yes; I remember that it was, but I would not say just when it was.

Question. But you remember it was before the agreement with the Cherokees was signed?

Answer. Yes.

Question. When this delegation returned from Washington in 1866, they reported to the Delawares what the offer was that was made by the Cherokees, did they not?

Answer. Yes, sir.

Question. Can you tell me what these offers were that were made by the Cherokees to the Delawares?

Answer. First, I think they offered to sell them land west of the ninety-sixth degree, and then they would not be under their laws on that side, or coming on the east side of the ninety-sixth degree they would be a part of the Cherokee nation and under the Cherokee laws.

Question. Did they not report that the Cherokees offered to sell to the Delawares a certain quantity of land in the Cherokee nation?

Answer. Yes, sir.

Question. And that quantity of land was how much acres of land for each person?

Answer. Well, it was 160 acres of land for each man, woman, and child of the Delawares.

Question. Did the delegation, when they returned from Washington in 1866, say what title the Delawares would have to this land if they accepted the offer made to them by the Cherokees?

Answer. Yes, sir. It was to be their own land, but they were to live under the Cherokee laws, but to have equal rights with the Cherokees.

Question. When you say it was to be their own land, do you mean they were to have the same title to it that they had to their own land in Kansas?

54 Answer. Yes, sir; after it was sectionized.

Question. According to the offer that was made or was reported to have been made by the Cherokees in 1866, what would happen to the land that was to be given to the Delawares or was to be sold to the Delawares? Supposing a Delaware died, where would the land go?

Answer. It would go to their heirs. That's the way the delegation explained it to the Delawares.

Question. This report was made by the delegation to the Delawares for the purpose of ascertaining whether the Delawares wanted to make the agreement or not?

Answer. Yes, sir.

Question. You talked with your father and some others about this?

Answer. Yes, sir. I have heard them report that offer after they had been down here and were satisfied with the country. My father did not come. My husband came. I have heard them say, and one or two others more, that they were satisfied to leave their children with the Cherokee nation. My father had a large family. He was a man that looked well after his family.

Question. What did they say in regard to a home?

Answer. They said it would be a permanent home; that it would be their own home to do just as they liked with.

Question. The idea was they were leaving a home in Kansas to get the same kind of a home in the Indian Terrritory?

Answer. Yes, sir.

Question. Was it not a consideration with them that they were

getting 160 acres in the Cherokee nation for $40 less than what they sold the land for in Kansas?

(The defendant objects to the foregoing question and all the other questions and answers above set out for the reason that it and they are incompetent and irrelevant, the contract in this controversy being in writing and complete and not ambiguous.)

Answer. I think they did.

Question. I must explain to you, Mrs. Armstrong, that The Cherokee Nation, the defendants in this suit, claim that the contract was for the Delawares to use and occupy this land for his life, but that when he died the land was to revert to the Cherokee nation. Was that explanation made by the delegation to the Delawares?

Answer. I think they explained that the land was to be theirs forever.

Question. The Delawares did not want to buy land without owning it outright?

Answer. No, sir; they did not.

Question. And that was the decision that was made; that they would not take this land unless they owned it outright, and that their heirs that came after them would get it?

Answer. I know the Cherokees understood it that way too, because I heard William P. Ross, one of their most prominent men—he and my husband were great friends—when he first came up, I heard them talking about the agreement, and Mr. Ross said "The Cherokees have made a bad bargain; nevertheless, it was a bargain and they must stick to it." William P. Ross was chief of the Cherokee nation at one time for several years.

Question. This idea of the Delawares having a full title to this land was the subject of discussion amongst the Delaware people?

55 Answer. Yes, sir; we talked of it, of course, before we came down.

Question. Because some Delawares had died it was specially considered?

Answer. Yes, sir.

Question. The question arose as to who would get the land of those dead Delawares?

Answer. Yes, sir.

Question. And everybody seemed to think the heirs would get it?

Answer. Yes, sir; that was what every one understood, so far as I know.

Question. And the people were sure that in the event of the death of any one of them his heirs would get the land?

Answer. Yes, sir.

Question. Do you remember when the Delawares left Kansas to come over here?

Answer. Yes, sir.

Question. And before they left they were enrolled by the Indian agent, were they not?

Answer. Yes, sir.

Question. Did every one on that roll come down here?
Answer. I don't think so. I know they did not.
Question. How many failed to come here?
Answer. I don't know how many failed to come down here. I know that several died.
Question. Who do you remember that died?
Answer. I remember an old man, Captain Moonshine. He had broken down his house and loaded up his wagons and went over to a neighbor's ready to move, when he took sick and died.
Question. Any others?
Answer. I don't remember any others now—their names.
Question. About how many failed to get here after the enrollment?
Answer. I do not know as I could tell that.
Question. Why?
Answer. I heard a woman say the other day that her husband died on the road coming.
Question. Who was that?
Answer. Mrs. John Captain.
Question. Did not you notice that when you got over here from Kansas that a good many that had been enrolled were not here?
Answer. Yes, sir.
Question. How were they accounted for? What did people say had become of them?
Answer. They said a good many of them had died.
Question. The Delawares in Kansas were accustomed to hold their lands in severalty, were they not?
Answer. Yes, sir.
Question. A good many of them did not want to come to the Indian Territory?
Answer. Yes, sir.
Question. There was a good deal of discussion, was there not?
Answer. Yes, sir; there were some that did not come but stayed in Kansas, and some of the others said they had to give up their land in Kansas to the Government and were taking their land in the Indian Territory, and we thought we would have it in the same way as we had it in Kansas.
56 Question. They were particular about how they would hold that land?
Answer. Yes, sir; they were very particular as to the amount.
Question. They wanted it understood that they were to get the land same as they held it in Kansas?
Answer. Yes, sir.
Question. They were just as particular as to where they held their lands as to the amount?
Answer. Yes, sir; and not only wanted 160 acres, but wanted the privilege of doing with it as they pleased.
Question. In addition to buying this land, they were to make another payment into the Cherokee nation?
Answer. Yes, sir.

Question. And in exchange for those two payments—$1 per acre for the land and a proportionate payment to the national fund—they were to get all the rights of Cherokee citizenship?

Answer. Yes, sir.

Question. So they understood they bought two things—first, the right to hold for his own and those that came after him 160 acres?

Answer. Yes.

Question. And second, full rights of Cherokee citizenship?

Answer. Yes, sir.

Question. They understood this agreement was made by the Cherokee nation?

Answer. Yes, sir.

Question. And you make your statement as to what they understood from hearing about it?

Answer. Yes, sir.

Question. Your father was chief of the Delawares?

Answer. Yes, sir.

Question. And he knew about those things and kindred things better than most people?

Answer. Yes, sir.

Question. Mr. Journeycake was a leader of the people?

Answer. Yes, sir.

Question. He was a kind of patriarchal adviser of the nation?

Answer. Yes, sir.

Question. Never had any dispute with anyone about his leadership?

Answer. No, sir.

Question. All had an affectionate regard for him?

Answer. Yes, sir.

Question. Your husband was one of the council and one of the delegates to Washington?

Answer. Yes, sir.

Question. And you heard your father and your husband talking over those things?

Answer. Yes, sir.

Question. And the things they said were in harmony with your testimony given to-day?

Answer. Yes, sir.

Question. Can you tell us what they said?

Answer. I don't know that I can give you word for word. That has been a good many years ago.

Question. You understood that the Delawares were to own this land as their own?

57 Answer. Yes, sir.

Question. They were to own it for themselves and those that came after them as heirs and descendants?

Answer. Yes, sir.

Question. Did they say that the Delawares, in return for those payments, were to have, in addition to 160 acres for each Delaware, all the rights of Cherokee citizenship in the Cherokee nation?

Answer. Yes, sir.

Question. This money that the Delawares were to pay was paid about May, 1869. Do you remember that?

Answer. No, sir; I do not remember that part.

Question. Well, do you know that before May, 1869, of considerable mortality amongst the Delawares? Didn't they die pretty rapidly after they got here?

Answer. Yes, sir.

Question. They were not acclimated. Was that the cause of their death?

Answer. Yes, sir.

Question. Can you tell how many of them died?

Answer. I could not tell you how many died. I suppose over 100.

Question. It was common talk that they died rapidly?

Answer. Yes, sir.

Question. Why did not the Delawares, since so many of them had died, protest against the full amount of money being paid for this land?

Answer. Because they had bargained for it, and they expected to pay for every one that had been enrolled.

Question. Then they thought that it would go to their heirs that came after them?

Answer. Yes, sir.

Question. No protest was made, was there?

Answer. None at all that I know of.

Question. Do you know of any Delaware Indian living who was a chief of the nation or council of the nation in Kansas?

Answer. No, sir; I do not.

Question. They are all dead, are they not?

Answer. Yes, sir.

Question. Was not it a habit amongst the Delawares when they had something of importance to consider for the chiefs and council to make it known to them?

Answer. Yes, sir.

Question. How did they spread the news throughout the nation?

Answer. Each chief had his counselor, who would scatter the news around.

Question. There was constant visitation going on amongst the Delawares?

Answer. Yes; they did not occupy but a small piece of land; they were all together.

Question. Those questions that were being considered by the Delawares before the agreement was signed at Washington were spread out amongst the Delawares in this manner?

Answer. Yes, sir.

Question. When the Delawares came here from Kansas each one selected as much of his 160-acre plot of land as he could improve?

Answer. Yes, sir.

58 Question. Did they improve it?

Answer. They did; yes, sir; most of them.

Question. Did they build any houses, barns, fences, and so forth?

Answer. Yes, sir; fences, and some real nice houses now.

Question. What is the value of those improvements?

Answer. I do not know that I could tell you that.

Question. I suppose from a few hundred dollars to a few thousand?

Answer. Yes, sir; I think mine was worth $1,000.

Question. The Delawares that had families, and that were able to do so, took up 160 acres each for himself and 160 acres for each member of his family?

Answer. That was the custom.

Question. And that was what your father did?

Answer. Yes, sir.

Question. He had a large family, had he not?

Answer. He had four children.

Question. Was his wife along with him?

Answer. Yes, sir.

Question. So that his family, including himself, was six persons?

Answer. Yes, sir.

Question. That family of six, then, was entitled to 960 acres?

Answer. Yes, sir.

Question. When the Delawares got their land in the Indian Territory did they lump their land in one piece and hold it in common amongst themselves, or did each one hold his land in severalty?

Answer. Each one went where he liked.

Question. Did he hold his land to himself—fence it in, cultivate it for his own use?

Answer. Yes, sir.

Question. The products of the land he sold and used for himself?

Answer. Yes.

Question. You were acquainted with the government of the Delawares in Kansas?

Answer. Yes, sir; I ought to remember.

Question. How did they govern themselves there?

Answer. When I was a child they just had their chiefs, without any rules in writing; but afterwards they made laws and elected their chiefs.

Question. Just before they left Kansas for the Territory did they have chiefs and council?

Answer. Yes, sir.

Question. They kept that up until your father died?

Answer. Yes, sir.

Question. When did he die?

Answer. In 1895.

Question. Where?

Answer. In the Indian Territory.

Question. After he died what form of government succeeded the old form?

Answer. They went and selected a business committee.

Question. And that committee now exercises the same powers as the old form of government did?

Answer. Yes, sir.

Question. This committee was selected by the people?

59 Answer. Yes, sir.

Question. As neighbors of the Cherokees, were not there many Cherokees cultivating farms?

Answer. Yes, sir.

Question. A habit of these Cherokees is to take as much land as they can get hold of and improve?

Answer. Yes.

Question. The Delawares saw this every day?

Answer. Yes, sir.

Question. Is it not common talk that it is the right of Cherokee citizenship to improve all they can?

Answer. Yes.

Question. The common belief amongst the Delawares and amongst the people where you live is that people of the Cherokee nation have a right to take up unoccupied land and improve it and cultivate it and take whatever crops they raise on it?

Answer. Yes, sir.

Question. As much land as he could get and hold it?

Answer. Yes, sir.

Question. The Delawares regard that anyone has a right to take their 160 acres whether they improve it or not?

Answer. Yes, sir.

Question. The Cherokees, as a matter of fact, did take farms wherever they went; they fenced them in and used them for the time being?

Answer. Yes, sir.

Question. This is done openly throughout the Cherokee nation?

Answer. Yes, sir.

Question. And also there is a rule or law that one man can not encroach upon another's farm within a space of a quarter of a mile?

Answer. Yes, sir.

Question. This is public knowledge?

Answer. Yes, sir.

Question. When Cherokees occupied their part of the country in this manner did they go according to this rule?

Answer. Yes, sir.

Question. These answers that you have given with regard to what the Delawares in Kansas thought of this agreement that was proposed by the Cherokees, and the way they looked at it and construed it, and what was told them by the chiefs and council, apply likewise to yourself, do they not?

Answer. Yes, sir.

Question. Those things were told to you by the leaders of the Delawares personally?

Answer. Yes, sir.

Question. And you also had this understanding?

Answer. Yes, sir.

(The attorney for the defendants objects to all the foregoing questions and evidence and answers, because they are incompetent, irrelevant, and immaterial in this, that most of them are hearsay, and all of them tend to vary a written contract.)

Cross-examination by Mr. HUTCHINGS:

Question. Was the contract which was entered into between the Delawares and Cherokees, and which was reduced to writing
60 at the time, read over and explained in your hearing?

Answer. No, sir; I never went to council.

Question. Do you know of its being read to anybody?

Answer. Yes, sir; in the council it was.

Question. Was not your council given full power to make this contract?

Answer. Yes, sir; they were.

Question. Do you not know that at the time the Delawares paid an interest into the Cherokee nation the number of acres each citizen was entitled to would have amounted to nearly 1,000 acres?

Answer. I do not remember.

Question. Don't you remember that about five years ago the Cherokee nation sold to the United States over 5,000,000 acres of land.

Answer. Yes.

Question. Don't you know that it now possesses, including what the Delawares occupy, something like 5,000,000 acres?

Answer. Yes, sir.

Question. Do you know now that it is estimated upon allotment that each Cherokee would receive about 145 acres per head?

Answer. I have seen that in the papers.

Question. That is common knowledge?

Answer. Yes, sir.

Question. Would you expect the Delawares, when they paid $160 a head for 160 acres, to get any interest in land beyond that 160 acres?

Answer. Yes, sir.

Question. Can you explain, then, what you paid for anything else?

Answer. I can not tell you just the amount they paid, but they paid for a share of all the land.

Question. Tell me how they ever paid anything.

(Objected to by counsel for plaintiffs as a matter of public record. Counsel for defendants can ascertain those facts from the record of what moneys were paid by the Delawares into the Cherokee nation, which is set out in the Cherokee books in writing.)

Question. Now, Mrs. Armstrong, after the money, outside of what you paid for the 160 acres, that the Delawares contributed to the Cherokee treasury was simply put in there, was it not, to make you

Delawares equal in money with Cherokees? In other words, the Cherokees had deposited with the United States Government a national fund amounting to about $280 per head, and were you not, as Delawares, required to deposit an equal sum per head in order that in a final distribution on the basis of citizenship rights you would not share in money of the Cherokee nation alone when you had paid nothing for it?

(Counsel for plaintiffs objects to this question because it is argumentative.)

Answer. My husband used to tell us people after we came here the Cherokees objected to the Delawares because they did not have any right; that he used to tell them they paid their money into the Cherokee nation; that they were glad to get it; that we paid the money for our rights. We did not come because we had married some of their pretty girls.

Question. You have not answered my question, Mrs. Armstrong.

Answer. Because they paid for equal rights.

61 Question. I understand that all the equal rights you paid for in addition to that was about $280 per head, that sum being only an amount equal to whatever a Cherokee citizen himself was entitled of their national funds?

Answer. Everything he was worth, whether it was funds, lands, or anything else.

Question. Assuming, then, Mrs. Armstrong, that the Cherokees at that time had land enough on division to have given each citizen 1,000 acres *per capita*, under your ideas of the agreement, then, if the land and moneys had been divided within a short time after you came to this country, for your $160 you would have gotten 160 acres of land, and for your $280 in money you would have gotten back $280 in money and more than 500 acres of land clear, would you not?

Answer. Yes, sir; I suppose we would. They did that because there was an agreement that the Cherokees were to take in friendly Indians, and they did not know how many they were to take in.

Question. Then, in your agreement it was understood that the Cherokee nation could embody in its citizenship such additional friendly Indians as it saw fit?

(Objected to by counsel for the plaintiffs, because there is no mention of such a thing in the agreement, and consequently there can be no call to construe to include that which is not in any way set forth.)

Answer. The Delawares did not have anything to do with that.

Question. You just stated you did know, and I want to know whether you did or not.

Answer. Yes, sir; and they did, too.

Question. What family did you have when you moved to the Cherokee nation and which were registered upon the original roll?

Answer. Myself and husband, four children, and his mother.

Question. How much land did you take up for your family?

Answer. Just a whole lot—all we could take care of.

Question. Did you measure it by 160 acres in any way?

Answer. No, sir; just cleared up what we could as we could.

Question. Did you know of anybody who endeavored to sell the land at the rate of 160 acres exactly?

Answer. I could not tell you.

Question. Have not these Delawares made places and sold them and made other places, just exactly as any other Cherokee citizen does?

Answer. Yes, sir.

Question. Have not the places of those registered Delawares who have died since they came to this country been sold upon their death and purchased by other citizens?

Answer. Yes, sir; their improvements. Their head right was not sold.

Question. Did John Bullette's father and grandfather come to this country, do you remember?

Answer. I could not tell you.

Question. Now, Mrs. Armstrong, don't you know that there is one of the accepted principles among all Indians that lands should never be held in severalty, but should be held as common property?

(Counsel for plaintiffs objects to this question, as it is immaterial and irrelevant.)

Answer. I don't know there was anything like that about it.

62 Question. In your direct examination you state, if I remember correctly, that the Delawares were governed by a chief and council in Kansas, and that after they came to this country they were governed in the same way. Now, don't you know that ever since they have been in this country they have been exclusively governed through the national council of the Cherokee nation?

Answer. I know that they were governed by the Cherokee nation, but they went to my father for advice just as long as he lived.

Question. Was not their lands and all divided amongst their families and managed after the death of a Delaware by the courts of the Cherokee nation and in accordance with the laws of descent and distribution of the Cherokee nation?

Answer. Yes, sir; we were under the Cherokee law, of course, and the time had not come for this allotment business. That 160 acres was to come in when that time came for distribution.

Question. Then, I understand from you that you have not heretofore—you Delawares—in settling upon the public domain, paid any attention to your right to 160 acres, but that you simply desired that that right be protected in the final allotment of land?

Answer. Yes, sir.

Redirect examination by Mr. HARBY:

Question. You have never understood that you had no right to 160 acres until some people or some commission should allow it to you, have you?

Answer. No, sir.

Question. Then, by your answer to the last question of cross-examination, do you or do you not mean that the Delawares were waiting for the time of allotment for their 160 acres to be definitely divided amongst them?

Answer. Yes, sir.

Question. The way they regard it now is that they occupy their 160 acres, but that its boundaries have not been defined?

(Question objected to by attorney for defendants as leading and suggesting an answer to the witness.)

Answer. Yes, sir.

Question. Objection has been made that my question was leading and suggested an answer. Now, I ask you whether or not you understand that when the 160 acres which each Delaware purchased shall be allotted to them, and when his communal right in the land of the Cherokees shall be allotted to him, he shall get by that allotment any of the land he now occupies, or whether he will be picked up and taken to some other part of the Indian Territory and told to take his land there?

Answer. I understand the Delawares will take it where they want it.

Question. In other words, the farms which they have taken up will be dealt out to the extent of 160 acres and their additional rights in the lands of the Cherokees, too?

Answer. Yes, sir.

Question. You never had any other understanding but that?

Answer. No, sir; never had.

Question. You stated on cross-examination something about there being an understanding amongst the Delawares that the Cherokees could bring in other friendly Indian tribes. Did you under-
63 stand that the Cherokees could do that by virtue of an agreement with the Delawares or that they could do it just because they arranged to do it.

Answer. The Delawares did not have anything to do with it.

Question. Did you mean to say, and do you now understand it, that in this agreement of 1867 there was any understanding that the Cherokees could bring in other friendly tribes to share in the communal rights which the Delawares thought they had purchased, or did the Delawares think when they purchased this they would have it forever amongst themselves?

Answer. They bought it for themselves, of course.

Question. Was that the understanding amongst the Delawares that this agreement of 1867 gave the Cherokees the right to bring into the Cherokee nation, without the consent of the Delawares, any

number of other people that they might desire to share in their lands and thereby lessen the proportionate amount of interest of the Delawares in the land?

Answer. I could not tell you.

Question. Do you understand that the Cherokees have a right to bring in as citizens other people who were not theretofore citizens?

(Counsel for defendants objects to this question because it is a matter of law and the witness is incompetent to define it.)

Answer. I do not know how much right they have any more than their own law.

Question. They have no right other than their own law by virtue of any agreement with the Delawares, have they?

Answer. No, sir.

Question. Have you ever intended to state that there was an agreement with the Delawares that gave them a right to bring any people to this country?

Answer. No, sir.

Question. Then, have you ever meant to say that there was an agreement with the Delawares that gave the Cherokees the right to bring other people into this land to share in the communal rights of this nation?

Answer. No, sir; the Delawares did not have anything to do with that.

Question. There was no agreement to that effect?

Answer. No, sir.

Question. When the Delawares purchased this communal right from the Cherokees, did they agree that the amount of their purchase should be divided up by bringing in other people later on?

Answer. No, sir; they did not.

Question. Was there ever any agreement between the Delawares and Cherokees by which it was understood that the Cherokees could deprive the Delawares of any of their property rights by bringing in others to share in them?

Answer. No, sir; they never agreed to any such a thing.

Question. Do you know of any other matter relative to this claim that would be of interest to us?

Answer. I have stated about all I do know.

MARY E. ARMSTRONG.

Sworn to before me this 7th day of December, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public.

64 I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, on the 8th day of December, 1898, at Nowata, hereby certify: That the witness, Mrs. Mary E. Armstrong, was duly and properly sworn; that the answers to the questions put to her were taken down in her presence and in my presence, and that they were read over to her and signed by her;

that at the taking of said testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and Wm. T. Hutchings, attorney for defendants.

Dated at Nowata, Ind. T., December 8, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for Northern Judicial District of the Indian Territory.

Deposition of Mary C. Beysiau, for Claimants, Taken at Nowata, Ind. T., on the 7th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth, relative to this case in which she is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Please give your name, age, residence, and occupation.

Answer. My name is Mary C. Beysiau; I am 49 years of age; I live on California creek, and am a farmer.

Question. You are one of the plaintiffs in this case?

Answer. Yes, sir.

Question. You were one of the registered Delawares in Kansas?

Answer. Yes, sir.

Question. What was your father's name?

Answer. Jim Secondine. He was chief before they sectionized the land back north. He died before that.

Question. He was chief in Kansas?

Answer. Yes, sir; he died right there.

Question. Do you remember the chiefs telling the people about the agreement the Delawares were going to make with the Cherokees?

Answer. Yes, sir.

Question. What was it they told them?

(Counsel for defendants objects to this testimony as being incompetent, irrelevant, and immaterial.)

Answer. They told them when they found a place that the Cherokees got good land and were good friends to us. They called us their grandchildren; they want us to buy their land from them.

Question. Did the chiefs say what the Delawares were to get for their money?

Answer. First, they wanted to offer it for fifty cents an acre, and finally they asked $1 an acre for it, and so we buy 160 acres of land and gave $1 an acre for it.

Question. And what else were you to get?

Answer. After we buy the land we bought the right and as much as a Cherokee got in the treasury, we put that in too to get equal

right, and if ever they divide the land we get 160 acres if they only get 40 acres. That's the way I understood it.

65 (The counsel for the defendants objects to all of the foregoing answer and asks its withdrawal from the case because it is incompetent and an attempt to vary the terms of a written contract.)

Question. Do you mean to say that for the payments which the Delawares made to the Cherokees the Delawares were to get 160 acres of land and in addition to that were to get a Cherokee communal rights both in lands and money?

Answer. Yes, sir; that's what I mean.

Question. The Delawares paid for those things?

Answer. Yes, sir; by their own money.

Question. Paid for the land and put money into the treasury besides?

Answer. Yes, sir; and we had money left, too.

Question. And is that what they stated to be the terms of the agreement? Is that what the chiefs told the people it would be in 1866?

Answer. Yes, sir.

Question. And then the agreement was signed in 1867?

Answer. Yes, sir.

Question. And this is what you heard from your father, Jim Secondine?

Answer. No, sir; he died before that. I knew it from the other ones. Journeycake is my second cousin. I knew what was going on all the time.

Question. There was a roll made of the Delawares that were coming here?

Answer. Yes, sir.

Question. The agent did that?

Answer. Yes, sir.

Question. Did any of them die before they came here?

Answer. Yes; a good many died.

Question. After they came here, before May, 1869, how many do you think died?

Answer. A good many got sick. Some got well and some died.

Question. About how many?

Answer. That's one thing I could not tell you.

Question. Did your mother die?

Answer. Yes; she was one of them that died.

Question. The people that came here selected their farms, did they not?

Answer. Yes, sir.

Question. Have you a farm?

Answer. Yes, sir; I have a farm and claims it to be my own and nobody else's.

Question. Did you improve your farm?

Answer. Yes, sir; I did.

Question. What is the value of it?
Answer. I could not say.
Question. Is it worth $1,000?
Answer. Yes. I try to live because I thinks it belongs to me when I worked for it.
Question. The other Delawares have built houses, fences, and barns on their land, have not they?
Answer. Yes.
Question. Set out trees and planted crops?
Answer. Yes, sir.
66 Question. Did they also build churches and schoolhouses?
Answer. Yes, sir.
Question. Did the Delawares have a form of government in Kansas amongst themselves? Did they have chiefs and council?
Answer. Yes, sir.
Question. They had that way of government up to the time that Chief Journeycake died in the Indian Territory?
Answer. Yes, sir.
Question. After he died they had a business committee?
Answer. Yes, sir.
Question. How many was on that business committee?
Answer. I believe it is five.
Question. And these five were selected by the Delaware people?
Answer. Yes.
Question. From amongst the Delawares?
Answer. Yes, sir.

Cross-examination by Mr. HUTCHINGS:

Question. How much land did you settle when you came to this country?
Answer. I never measured the land when I settled. I thought it belonged to me and commenced to farm.
Question. Don't you know about how much?
Answer. No; because it was not sectionized at that time. I said but if ever it becomes sectionized I want what my grandchildren gets after I put my 160 acres aside. We wanted to send our children to school at Tahlequah and did send them there, but they sent them back and said they had no room, and they had to come back afoot. My boy did that. We tried, too, to get children into the orphan asylum but they would not take them.
Question. Then this 160 acres business, you only take that into consideration when you come to allotment.
Answer. I take that and put it one side and I want more in addition to that.
Question. Do you want any more than you have fenced up and cultivated now?
Answer. When it comes to sectionize out the land, when it comes to that, I take just as much as I want, and if the Cherokee gets only 10 acres, I want that, too.

Question. How much have you got fenced up and cultivated now?

Answer. I could not really tell you how many acres.

Question. Just guess at it.

Answer. Oh, 700 acres in one place.

Question. Any more?

Answer. My husband has got another place.

Question. How much has he got?

Answer. You better ask him.

Question. Well, just guess about it. About how much do you think, Mrs. Beysiau?

Answer. I ain't going to tell you, because I don't attend to that. I never go around. If you had let me know that way back I would have gone and measured it.

Question. Is his place as much as yours?

Answer. A little bigger.

67 Question. Then, if I catch the drift of your remarks, you and your husband went to work and settled all the Cherokee domain that you could?

Answer. I could not understand what he means.

Question. That is, you settled all the land you could get hold of?

Answer. We had been working away making farm so that we could get living out of it. We did not want spite out of nobody.

Question. You settled that land just like every other citizen did?

Answer. I settled it because I bought it.

Question. You settled on a heap more than you bought?

Answer. I claimed more.

Question. Have you ever made any places and sold them?

Answer. No, sir; I did not want to sell my places. I want them for my heirs. If I rent it to white man, I want them to farm it and give my part. I am stingy.

Question. About what is the average yearly income from your land?

Answer. Sometimes $1,000, when the crop was good, and sometimes when the season not good I did not get nothing much.

Question. Did that Delaware council you speak of convening in this country ever pass any laws?

Answer. Since they were here? We have no laws, but we have a custom. They govern their affairs as a Delaware people.

Question. Were not you governed by the laws and customs of the Cherokee nation after you came here?

Answer. I did not read of it.

Question. If you had killed a man they would have hung you under Cherokee law, would they not?

Answer. I don't know. Never paid any attention about that.

Redirect examination by Mr. HARBY:

Question. When the Delawares came here and had children, or when the men had wives, did not they take up 160 acres for each member of the family?

Answer. Yes, sir.

Recross-examination by Mr. HUTCHINGS:

Question. And that accounts for some of the Delawares having such big farms?
Answer. Yes, sir; that's it.
Question. You say you did not measure your land?
Answer. I did not measure my farm. That's correct.
Question. How did you get at that 160 acres?
Answer. Because I bought it.
Question. Did you settle it?
Answer. Yes, sir; I live there right now.
Question. On 160 acres?
Answer. It is more than 160 acres, my farm is.
Question. What did you tell him, then, for that you settled at the rate of 160 acres a head?
Answer. Well, because I had lots of children at that time that are dead now, but I claim all that. It belongs to me to-day, and I hope I will get it all.
Question. Don't you know that you just settled this land over here like any other Cherokee citizen, and that you settled just as much or just as little as you were able to settle without any
68 regard to any 160 acres, expecting that the 160 acres would be taken care of when the land was allotted?
Answer. No, sir; I ain't settled down like the Cherokees, because I want more than they get.
Question. How much did you settle on in the beginning?
Answer. Was not I told you I never measured it?
Question. How much did you think you were settling on?
Answer. I did not think at that time how much I was settling on. I make my farm, and I think that belongs to me and our grandchildren.

Redirect examination by Mr. HARBY:

Question. Do you know of anything else that would be of interest to us in this case?
Answer. No, sir; I think that's all.

Examination concluded.

MARY C. BEYSIAU.

Sworn to before me this 7th day of December, 1898.
[SEAL.] P. H. WILKERSON,
Notary Public.

I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, on the 8th day of December, 1898, at Nowata, Ind. T., hereby certify that the witness, Mary C. Beysiau, was duly and properly sworn, that the answers to the questions put to her were taken down in her presence, and that they were read over to her and signed by her; that at the taking of said

testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and William T. Hutchings, attorney for defendants.

Dated at Nowata, Ind. T., December 8, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for Northern Judicial District of the Indian Territory.

Deposition of Henry Armstrong, for Claimants, Taken at Nowata, Ind. T., on the 7th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth, relative to this case in which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. You are one of the plaintiffs in this case, are you not?

Answer. Yes, sir.

Question. Now, Mr. Armstrong, please give your name, age, occupation, and place of residence.

Answer. My name is Henry Armstrong; I am 56 years of age; I am a farmer, and I live at Coody's bluff.

Question. What relation are you to Mrs. Mary E. Armstrong?

Answer. She is my sister-in-law.

Question. You are one of the Delaware Indians who lived on the reservation in Kansas?

69 Answer. Yes, sir.

Question. This agreement, which we cite in our petition, between the Delawares and Cherokees, which was signed in Washington in 1867—tell us when you first heard of it. How long before it was signed?

Answer. Oh, sometime in July, I think.

Question. They talked about it in 1866, did not they, when the delegation returned from Washington?

Answer. They talked about it in 1863—commenced talking about it.

Question. A delegation was sent from the Delawares to the Indian Territory to look over the land?

Answer. Yes; but the first time they did not get down here.

Question. After they got down here, they sent a delegation to Washington, and this delegation came back in 1866?

Answer. Well, I do not know that it had anything to do with this case. It is different, entirely. They went to Washington to dispose of land they had in Kansas.

Question. And each Delaware got $200 for the 80 acres they owned in Kansas?

Answer. Yes, sir.

Question. And after they disposed of that land they had to go somewhere else?

Answer. No; they did not sell it right off, but they knew where they could dispose of it at the time.

Question. The Delawares in Kansas owned their own land, did they not?

Answer. Yes, sir.

Question. Each Delaware owned his place?

Answer. Yes, sir; 80 acres.

Question. Had a right to do with it as he pleased?

Answer. The chiefs and council had.

Question. The people gave the chiefs and council a right to represent them in disposing of this land to the United States Government?

Answer. Yes.

Question. You were well acquainted amongst the Delawares in Kansas—were you or were you not?

Answer. Yes; I knew most of them.

Question. Were you a relation of any of the chiefs?

Answer. One of them.

Question. Who was that?

Answer. Charles Journeycake.

Question. Did you know the chiefs?

Answer. Yes, sir.

Question. Talked with them?

Answer. Yes; once in awhile.

Question. When the question of removing came to be considered by the people, how did the chiefs and council make it known to them?

Answer. They generally called the people together and told them what they had done. That's all I know about it.

Question. This agreement between the Delawares and Cherokees was made known to the people in 1866 before it was finally signed, was it not?

Answer. Well, they came once in March, 1866, I think, to make a trade with the Cherokee nation, and I think they got back sometime in June, 1866.

70 Question. And when they got back they made it known to the people?

Answer. Yes, sir.

Question. What did they say this agreement was?

Answer. They said, now the people will have to emigrate into the Cherokee nation and become one of the Cherokees, and they have bought 160 acres of land for each one, and they paid equal proportion into the Cherokee nation that the Cherokee nation had at the time.

Question. Did they say how the Delawares would own this land—this 160 acres?

(Attorney for the defendants objects to the question as incompe-

tent, irrelevant, and immaterial, particularly so because it is matters about which the witness seeks to testify that was reduced to writing, and that a written contract can not be varied by parole testimony.)

Answer. Well, they talked about it this way: That the Delawares were to get 160 acres, and if the Cherokees—if they only had 40 acres a head—still the Delawares would get 160 acres. That's the way they talked about it. I don't know how true it was.

Question. You mean to say that, never mind how much the Cherokees got out of their communal rights, the agreement with the Delawares gave the Delawares at least 160 acres. Is that it?

Answer. Yes, sir; that was what was said by the chiefs and council.

Question. What right, with regard to the length of ownership, was the Delawares to have in this land?

Answer. I did not hear, but I suppose they got 160 acres. That's what they talked about.

Question. Now I must explain to you, Mr. Armstrong, because your answer did not convey its meaning very clear. Did this council and chiefs explain whether the Delawares would own the land forever, and would it go to their children when they died? Was that the explanation?

(Counsel for defendants objects to this question because a written agreement speaks for itself.)

Answer. I did not hear anything remarked very much about how long they could own the land. They only said they had bought 160 acres for each one. That's all I know.

Question. The Cherokees claim that if a Delaware dies this 160 acres that he bought reverts or goes back to the Cherokees. His children do not get it. Did you understand the explanation of the council that way, or different?

Answer. I never heard until lately—never heard it that way before.

Question. Did the council explain it in that way?

Answer. No.

Question. How did they explain it?

Answer. Well, they explained it this way: That they had bought 160 acres; that if the Cherokees only got 40 acres, they would get 160 acres for each one. That's all I know.

Question. Suppose a Delaware was to die before he came here who would get this land—his 160 acres?

Answer. Well, they bought 157,600 acres of land—why, the Delawares would get it.

Question. Were you married when you left Kansas?

Answer. Yes.

Question. Had any children?

Answer. Yes; had one.

71 Question. Did they come over here with you?

Answer. Yes.

Question. Suppose you had died before you came here, who would have got your land?

Answer. Well, if the chief and council had bought the land in the Cherokee nation, 157,600 acres, and paid $157,600 for it, of course my family would get the land that I had, I suppose.

Question. You understand also that the Delawares had to pay a sum of money to the Cherokees besides what they paid for this land?

Answer. Yes.

Question. And what rights was it explained to the people by the chiefs and council that the Delawares would get with regard to Cherokee citizenship, in addition to their owning the land—that is, the 160 acres apiece?

Answer. Well, they said they paid in so much money to the national council and so much to the school funds. That's all I heard.

Question. Did they explain that the Delawares would get Cherokee citizenship?

Answer. Yes.

Question. And did they say what rights they would have with the Cherokees?

(Counsel for defendants objects to this question because a written agreement speaks for itself.)

Answer. Well, this money had been paid in to get equal rights with the Cherokee nation.

Question. You mean they were to have equal rights in everything, in addition to this 160 acres?

Answer. Yes, sir.

Question. When you came over here did you select your land?

Answer. I did.

Question. Did you improve it?

Answer. I did.

Question. What did you do to it?

Answer. I opened up a farm—built houses on it, and fences?

Question. What is the value of your improvements?

Answer. Oh, I suppose about $6,000, anyway.

Question. Have you been a farmer ever since you came here?

Answer. Not exactly.

Question. A great part of the time?

Answer. Yes.

Question. You are acquainted with the value of farm improvements?

Answer. I think I do.

Question. Did your neighbors select their land and improve it in the same way as you did?

Answer. Yes, sir.

Question. All the other Delawares improved their land?

Answer. Yes; I see they got houses.

Question. Does each man hold his farm separate from his neighbor?

Answer. Yes, sir.

Question. Each one has his land as his individual property?

Answer. Yes, sir.

Question. Have you been around the Territory to any extent?

Answer. Oh, yes; some.

Question. You see the Cherokees cultivating their land?

72 Answer. Yes, sir.

Question. A Cherokee takes all the land that he can get, does he?

Answer. I suppose so.

Question. You see that, don't you?

Answer. I don't know; there is much difference one way or the other.

Question. You understand that a Cherokee can cultivate all the land that he can take care of, don't you?

Answer. I could not say that.

Question. When this agreement was made, or when this agreement was proposed to the people by the chiefs and council, was it understood that the Cherokees could bring in any number of other people that they wanted and lessen the communal rights of the Delawares in the land?

(Objected to by counsel for the defendants on the grounds that the contract speaks for itself, and for the further reason that it is a matter of construction of the laws of the Cherokee nation and of the treaty of 1866, which this witness is not competent to construe.)

Answer. I never heard them say about bringing anybody in.

Question. You did not understand that to be the fact, did you?

Answer. No.

Question. When you bought your communal right in the Cherokee nation you did not agree that they could be made smaller any time the Cherokees wanted?

Answer. No; the talk was we would get 160 acres.

Question. Before the Delawares came here from Kansas the agent made a roll, did not he?

Answer. Yes, sir.

Question. And before they got here a good many on that roll died?

Answer. Yes.

Question. How many?

Answer. I really could not say exactly.

Question. About 50, say?

Answer. No, not so many as that, I should think. You mean that died on the way?

Question. Before May, 1869, a good many of them died, did not they?

Answer. Oh, yes; there must have died from 80 to 100.

Question. Would not you often come across the fact that some people died right after the register was made?

Answer. I could not answer that.

Question. You understand that the Delawares had a system of government among themselves in Kansas?

Answer. You got me that time.

Question. Did they have chiefs and council in Kansas?

Answer. Oh, yes, sir.

Question. And those chiefs and council took care of the affairs of the people?

Answer. Yes, sir.

Question. And they kept up this way of doing until Chief Journeycake died, did they not?

Answer. Yes; they did.

Question. And after he died they had a business committee?

Answer. Yes, sir.

73 Question. And it does the same as the chiefs and council used to do—take care of the affairs of the people?

Answer. Yes, sir; they do.

Cross-examination by Mr. HUTCHINGS:

Question. What is the difference, Mr. Armstrong, in the way in which you Delawares settled this public domain from the way in which all the other Cherokees settled it?

(Objected to by counsel for plaintiffs because it does not appear how they were to settle, nor that Mr. Armstrong knows how they were to settle it, because there is no foundation laid for the question.)

Answer. I did not see any difference. Both parties settled where they could get land.

Question. Settled just as much as they could take in?

Answer. Yes; I believe they do.

Question. Did not the Delawares sell and trade in their improvements that they made just like other Cherokee citizens?

Answer. Yes, sir.

Question. Did they trade them off to other Cherokee citizens who were not Delawares?

Answer. I don't suppose there is much difference either way so long as they trade.

Question. When they settled on the public domain did they in the beginning or have they since at any time had regard as to whether or not they settled on 160 acres for each member of the family, or whether or not they just settled where they could get as much land as possible?

Answer. Well, I believe they settled on just as much as they could.

Question. Don't you think you have a right to give up the place you are on any time prior to allotment and go over and get you another 160 acres where you like that is not occupied by any other Cherokee citizens?

Answer. I suppose the idea would be that if I gave up my 160 acres I would go somewheres else.

Question. Do you know whether John and George Bullette's father came to this country?

Answer. No, sir.

Question. Don't you know, Mr. Armstrong, that when the heads of Delaware families have died that in many instances their improvements have been sold to Cherokee citizens and that their children have gone off and made other improvements on the public domain *of the Cherokee nation*?

Answer. Yes, I believe so, on both sides.

Question. How many chiefs did the Delawares ever have at one time?

Answer. In this country?

Question. In any?

Answer. In Kansas they had two.

Question. Had two at one time?

Answer. Well, I take that back; they had three.

Question. All equal?

Answer. Yes; it seems they had three clans or bands and each had a chief.

Question. Did the council of the Delawares ever attempt to pass any laws for your government after they came to this country?

Answer. No, sir; only what invested fund there was; that's all.

74 Question. What you people paid into the Cherokee treasury was just to make you equal in the national fund, school fund, and other funds in the Cherokee nation?

(Objected to by counsel for plaintiffs because it is already answered that the payments made to the Cherokees equaled in everything, besides giving them 160 acres.)

Answer. I have answered that once.

Question repeated.

Answer. Well, that's the way I understood it was then.

Question. Each Cherokee citizen had as an invested fund about $280?

Answer. I do not know.

Question. Did not you people pay in about $280 apiece?

Answer. We paid $284.10; that's what it was.

Question. That was estimated to make you equal in the national fund? Don't you know how much each head paid in?

Answer. No, sir.

Question. You paid in $160 on land per head, which you say entitles you to 160 acres of land?

Answer. Yes, sir.

Question. You got by that deal that Cherokee citizenship and more than 500 acres of land per head; can you state what you paid to get that equality in the land?

Answer. Well, I understand it this way: If we divided up at the time we came in, we would get a lot more land.

Question. You would have got an awful fine deal?

Answer. Yes, sir.

Question. You have already gotten back about $295 in money per head, have you not, from the Strip payment?

Answer. Yes, but we ain't got it all yet.

Question. You have not got it yet?

Answer. No.

Question. Why have you not got it?

Answer. The Cherokee nation owes us $12,000 yet.

Question. How much did you get per head?

Answer. Well, first $200.37; then $29.17, I think, the last time.

Question. Then you have got about $200 interest in the invested fund of the Cherokee nation now, have you not, after the debts are paid?

Answer. Well, I don't know about that.

Question. Don't you know the Cherokee nation has got over $5,000,000 of invested funds now?

Answer. I did not hear they had that, but I heard they had some invested funds. I don't know how much.

Question. If they have got that much, and you get 160 acres of that land, you would still be considered ahead on your deal, won't you?

Answer. I don't know whether we would or not; owing to how much interest there would be. I suppose the invested fund would increase the same as the Cherokee nation would do.

Question. Do you think that your invested fund ought to bear its proportion of all the expenses of running the Cherokee nation?

(Counsel for plaintiff objects to the foregoing question because it is immaterial, irrelevant, and incompetent also.)

Answer. Well, I could not really answer that point.

Question. Do you expect to come over here and get into this nation as a part of it and have the nation bear all of your expenses?

75 Answer. Well, I tell you that much: The Delawares have got no benefit from the expenses of the Cherokee nation.

Question. Did not the Cherokee courts administer upon the estates of the deceased Delawares?

Answer. Well, sometimes.

Question. Did they not prosecute the men that stole your property?

Answer. Well, I guess they have; I don't really know about that.

HENRY ARMSTRONG.

Sworn to before me this 7th day of December, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public.

I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, on the 8th day of December, at Nowata, hereby certify that the witness, Henry Armstrong, was duly and properly sworn; that the answers to the questions put to him were taken down in his presence and in my presence, and that they were read over to him and signed by him; that at the taking of said testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and William T. Hutchings, attorney for defendants.

Dated at Nowata, Ind. T., December 8, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for Northern Judicial District of the Indian Territory.

Deposition of Stephen Miller, for Claimants, Taken at Nowata, Ind. T., on the 7th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness, having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to this case in which he is to testify, testifies as follows:

Direct examination:

Question. Please give your name, age, residence, and occupation.

Answer. My name is Stephen Miller; I am 35 years of age; I live at Delaware, Ind. T., and I am a farmer.

Question. You are one of the Delawares suing in this case?

Answer. Yes, sir.

Question. You are one of the registered Delawares in Kansas, Mr. Miller?

Answer. Yes.

Question. You left there to come over with other Delawares to the Cherokee country?

Answer. Yes, sir; I came with them.

Question. How many are there in your family?

Answer. Seven. I lost one of my children Sunday morning.

Question. How many acres have you got in cultivation?

Answer. Well, at home—I will just have to guess at it—over 200 acres, and I have got 150 inclosed, in addition to that.

76 Question. You have been all over the land now occupied by the Delawares?

Answer. Pretty much.

Question. You are pretty well acquainted?

Answer. Yes.

Question. Have the Delawares improved the land that they occupy?

Answer. Yes.

Question. What is the value of the improvements on your land?

Answer. Why, I suppose it would be worth about $1,500. I would not take that much for it. It would be worth more than that. I would not take $4,000 of any man's money for it.

Question. How does the value of the Delaware improvements run—that is, improvements on the various farms owned by the Delawares; how much are they worth as a rule?

Answer. Well, they run from $100 up to $1,000, and more, too.

Question. There is not any of them worth as little as $100?

Answer. No; you would not find any.

Question. As a rule you don't find them worth as little as $100?

Answer. No; not that small—not less than $400 to $500. That is about the least they could go.

Question. Now, there are churches and schoolhouses on the Delaware lands?

Answer. Yes.

Question. Built by the Delawares?

Answer. Yes.

Question. Do you know who built the schoolhouse at California creek?

Answer. Yes; I am the man that built it.

Question. How much did you subscribe to it?

Answer. Must have been between $50 and $70; there were three of us put it up.

Question. The two schoolhouses at Caney, were they built out of Delaware funds also?

Answer. Yes.

Question. That is to say, the agent who distributed the funds was instructed to retain enough to pay for the house?

Answer. Yes, sir; that's right. That house on Caney had been built a good while. I was pretty small, and don't know all the particulars of how it was paid for, but I know it was paid for by the Delawares.

Question. How much did these houses cost?

Answer. One house cost $800, I believe, and the other house, I believe, I was told it was worth $600; some ways along there.

Question. There is a pay house at Alluwe belongs to the Delawares?

Answer. Yes.

Question. The Delawares have an organization separate from the Cherokees?

Answer. Yes.

Question. Have a business committee of their own, have they not?

Answer. Yes.

Question. Did you ever speak to a member of the Cherokee board of education about giving the Delawares a school?

Answer. Yes; I saw Mr. Butler, the chairman of the board, at the freedmen payment. I asked him about having a public
77 school; told him we had the house completed and everything—all we lacked was to have a school granted to us by the board.

Question. What did he say?

Answer. He told me I would have to make out an application and send it down; that we had to have so many scholars—13 or 14—and we would get a school.

Question. You asked Mr. William Adams to write for you?

Answer. Yes; after I got tired waiting on him.

Question. Did you get a reply to that letter?

Answer. No, sir; never even answered the letter.

Question. How many children of citizen Delawares go to that school?

Answer. I suppose about 20, maybe 25.

Question. Do you know of anything else that would be of interest in this case?

Answer. Not just now.

No cross-examination.

STEPHEN MILLER.

Sworn to before me this 7th day of December, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public.

I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, on the 8th day of December, 1898, at Nowata, Ind. T., hereby certify that the witness, Stephen Miller, was duly and properly sworn; that the answers to the questions put to him were taken down in his presence and in my presence, and that they were read over to him and signed by him; that at the taking of said testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and William T. Hutchings, attorney for defendants.

Dated at Nowata, Ind. T., December 8, 1898.

P. H. WILKERSON,
Notary Public, Northern Judicial District of the Indian Territory.

Deposition of William Adams, for Claimants, Taken at Nowata, Ind. T., on the 7th Day of November, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness, having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to this case in which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Please give your name, age, residence, and occupation.

Answer. My name is William Adams; I am 64 years of age; I live at Alluwe, Ind. T., close to the post-office; I am a minister of the gospel.

Question. How long have you been a minister, Mr. Adams?

Answer. Thirty years last month.

Question. What church?

Answer. Missionary Baptist church.

78 Question. You are one of the Delawares that lived in Kansas?

Answer. Yes, sir.

Question. When was it that you first heard of the Cherokees wanting the Delawares to come down into the Territory?

Answer. Well, it was along in 1863 and 1864.

Question. The Cherokees came up there to see the Delawares?

Answer. Right up to our reservation. The first time they came up, some of them, as refugees during the civil war. I do not know just when they came. We called our people together about this thing.

Question. What did they say?

Answer. They learned that our people were about to change for another location and buy their homes somewhere else, giving up that country up there. We were about to give it up, and this thing was known to them by our passing their country on our way south to the Washita, looking for a location. Some of the Delawares are down there now. I made one trip. Our head chief and second chief were along with me. On our way going through this country we would meet Cherokees and they bantered us to buy land from them. One inducement to us to buy land here was that it was a milder climate than it was in Kansas. We would call our headmen together and talk the matter over.

Question. What did they say?

Answer. That they came here as friends in Indian fashion to talk about this thing and called the Delawares their grandfathers.

Question. That was significant in a friendly talk?

Answer. Yes.

Question. They seemed to regard the Delawares as a more ancient people?

Answer. Yes, sir.

Question. Now, tell the proposition that the Cherokees made to the Delawares when they called them together in 1862.

Answer. These Cherokees, when they came up there, when they began to see that it was possible our people might make a deal with the Cherokee nation, would come and talk with and try to get us to buy this land. I know this, that everything favorable they were willing to do, and they did ask the Delawares to buy the land.

Question. Did not they offer the land here at first for 50 cents an acre and then raise it to $1 if the communal right was included?

Answer. I believe that's it. They wanted it understood, not thinking that a bargain would be concluded there, but they wanted to impress on the minds of people that they would let this land go as a public land at 50 cents an acre.

Question. But when they came to consider having also the com-

munal rights—the rights of citizenship—they wanted to raise the price to $1 an acre?

Answer. Yes, sir; it was included in that way.

Question. There were many talks with the Cherokees?

Answer. Yes, sir; for quite a time.

Question. How long were they talking over this matter?

Answer. They talked along from 1863–64–65 until the treaty was effected.

Question. That was quite a long time?

Answer. Yes, sir.

79 Question. Now, finally, it came down to when the Delaware delegation returned from Washington in 1866, and this delegation explained to the Delaware people. What was the definite proposition made by the Cherokees at Washington?

Answer. No more than just what the treaty was.

Question. Now, what did they explain the treaty was to be?

Answer. I might not be able to call it to the very letter, but can quote it in substance. In the first place, when the Cherokees saw that our people wanted the best land and good land, we let go of very good land, good homes, good country in Kansas. Now, to better ourselves, we thought probably the best thing would be to comply with the wishes of those Cherokee friends, being, as they were, up there and bantered us for this trade. But there was a kind of a check for a while when it came to this question of $1 an acre after we favored them that we would buy land from them and then raise on it when they saw we wanted good land, a good home; but it was our grandchildren, and we thought we better pay at $1 an acre, and our men had a long talk about it. Some objected a while, but finally all agreed to it. They objected to the price, but after it was distinctly understood that it would include the communal rights they thought best to pay that.

Question. And one consideration was that by paying the extra price the children would get the 160 acres after they themselves would die?

Answer. They thought that it would bring in all those that would get land, but at the same time those children that were born here would be the same as a native-born Cherokee.

Question. The Delawares that came from Kansas would also get Cherokee citizenship?

Answer. Yes, sir.

Question. Would have communal rights?

Answer. Yes, sir.

Question. All this was in addition to the 160 acres of land?

Answer. The 160 acres of land that we bought was exclusively Delaware land.

Question. The idea was that the Delawares would have exclusively 160 acres apiece, and in addition to that would have what?

Answer. In addition to that we would have equal rights with the Cherokees.

Question. Equal rights in what?

Answer. In land and funds which belonged to the Cherokees.

(Attorney for the defendants objects to all of the foregoing questions and answers and asks that they be withdrawn from the consideration of the court because they are incompetent, irrelevant, and immaterial as tending to vary by parole evidence a plain, unambiguous, written contract.)

Question. Now, Mr. Adams, these facts which you have just related are within your personal knowledge?

Answer. Yes; they are just the facts and I have never known it any other way.

Question. Now, these facts, what the agreement carried with it, was explained by the chiefs and council to the Delawares in 1866?

Answer. Yes, that so; that's right.

Question. And thereafter the agreement was signed?

Answer. That's right.

Question. When they were satisfied with the explanation the agreement was signed?

Answer. Yes.

80 Question. When this agreement was signed they sold their land in Kansas, through the United States Government, to some corporation, at $2.50 per acre?

Answer. Yes, sir; to the railroad company.

Question. Were there not other places where the Delawares could have gone where the land was offered to them cheaper?

Answer. Yes, sir.

Question. What places?

Answer. Well, in the Creek country.

Question. Were there others?

Answer. Yes, sir; in the Chickasaw country.

Question. What could they get it for there?

Answer. Oh, for a song; for 30 to 40 cents an acre.

Question. Now, you know most of the Delawares?

Answer. Yes.

Question. Been round amongst them?

Answer. Yes.

Question. Your vocation as a preacher has brought you in personal contact with them?

Answer. Yes, sir.

Question. You have spoken to them?

Answer. Yes, sir.

Question. You have heard them talk over the matter of this treaty?

Answer. Yes.

Question. And they understood it and spoke of it in the way you have set forth above?

Answer. Yes, sir.

Question. Now, you know a list was made of everybody that was coming here?

Answer. A list was made of those that elected to come over in this country.

Question. Did everybody get there?

Answer. With the exception of a few.

Question. After they got here and up to May, 1869, did not a good many of them die?

Answer. Yes, sir.

Question. Why did not the Delawares object to pay this money in full when so many of them had died?

Answer. How did you mean that?

(Question repeated.)

Answer. Because they were not that kind of people; whenever they agreed to do anything they were going to carry it out. They had agreed to pay for what was on the list and they carried that out.

Question. Who was to get the land of the dead people?

Answer. The friends and descendants—the heirs.

(Counsel for defendants objects to the answer and question because the witness is not competent to construe a written contract which speaks for itself.)

Question. Now, you know that in 1863 a delegation was sent by the Delawares to look at this land in response to the solicitation of the Cherokees?

Answer. Yes, sir; I was one of those parties.

Question. Do you know the difference between holding land in common and each one holding his own land?

81 Answer. Well, holding land in common belongs to the people, but each one holding his own land is a question for allotment.

Question. Did the Delawares expect for each one to hold his own land?

Answer. Yes, sir; that was the understanding.

Question. They had their own land in Kansas?

Answer. Yes, sir; we did.

Question. In the latter part of their life, before they moved to the Cherokee nation, it was the habit for each one to hold their own land?

Answer. Yes, sir.

Question. And that was one of the considerations of their coming over here?

Answer. Yes, sir.

Question. In Kansas the Delawares had a definite way of governing themselves?

Answer. Yes, sir.

Question. And they had a council and chiefs?

Answer. Yes.

Question. Did they have one supreme chief, or more than one?

Answer. They had a head chief and then assistant chiefs.

Question. Before they came to the Indian Territory Chief Journeycake was head chief, was he not?

Answer. No, sir; Chief John Connor was head chief, and Journeycake was assistant chief. The treaty shows that.

Question. They kept up this system of government after they came to the Indian Territory, did they not?

Answer. As near as we could.

Question. Who was chief after Connor died?

Answer. Journeycake was last chief after Chief Connor died.

Question. After he died they had a committee to take care of their affairs?

Answer. Yes, sir; they were chosen by the people.

Question. This was called the business committee?

Answer. Yes, sir.

Question. Did not they have a pay house?

Answer. Yes, sir.

Question. Is it still in existence?

Answer. Yes, sir.

Question. Who built that?

Answer. The Delawares did, from Delaware funds.

Question. Did the Delawares build schoolhouses also and churches?

Answer. Yes, sir.

Question. And they are still standing?

Answer. Well, the first church was taken down by a storm. Two or three schoolhouses are still standing.

Question. You watched these things pretty closely?

Answer. Yes, sir.

Question. Being a minister, you saw everything mostly that was going on amongst those people?

Answer. Yes; I have occupied the schoolhouses and churches both as a minister.

Question. Did you ever hear of the Cherokees building schoolhouses for the Delawares?

Answer. No, sir.

82 Question. Did you ever hear of any schoolhouse the Cherokees gave to the Delawares?

Answer. No, sir.

Question. Did you ever apply to the Cherokees for a school-teacher for a schoolhouse and not get her?

Answer. Yes, sir.

Question. When was that?

Answer. That has been a while ago. There is one schoolhouse over here at Caney and another in my neighborhood, Alluwe, and one at Coody's bluff, and the teachers were granted conditionally that just the moment we failed to give the average attendance that the law required we forfeited the school, and then it was given back to some other community.

Question. Was ever a teacher refused when the average attendance was all that the law requires?

Answer. There is something like that up here now.

Question. Give that case.

Answer. The Delaware schoolhouse at California creek.

Question. Did you ask for a teacher for that schoolhouse?

Answer. Yes, sir.

Question. How many pupils were there when you asked for it?

Answer. Twenty to 25; about 25.

Question. That schoolhouse was built by private subscription?

Answer. Yes; from the Delawares.

Question. And you asked for a teacher for that schoolhouse and did not get one?

Answer. Yes; I applied to one of their board and did not get any reply.

Question. You wrote to Mr. Butler, did you not?

Answer. Yes, sir.

Question. There is a school in your neighborhood the same way, is there not?

Answer. Yes, sir.

Question. And one at Whiteoak the same way?

Answer. Yes, sir; same way. They did grant one at Whiteoak, but they moved it farther east away from Whiteoak.

Question. Is not there one at High Prairie same as the others?

Answer. Well, they did have one. It is in sight of some Delawares. It is run by private subscription; still it is within reach of some Delawares, and if it was a public school it would be patronized by the Delawares, but it is not a public school.

Question. There are three churches that were built by the Delawares, are not there?

Answer. Yes, sir; the first one was built out of the Delaware fund and the other two by private subscription.

Question. Were the subscribers all Delawares?

Answer. Yes, sir; pretty much.

Question. Did you understand that the Delawares paid two separate amounts to the Cherokees?

Answer. Yes, sir.

Question. One of those payments was for the land they had bought and the other was a proportionate payment to national fund?

Answer. Yes, sir.

Question. What was it understood that those payments,
83 taken together, entitled them to? What did they get for those payments from the Cherokees?

Answer. They got 160 acres of land for each Delaware exclusively and equal rights with the Cherokees besides.

(Counsel for defendants objects to the answer and question and asks that they be withdrawn from consideration in this case, for the same are incompetent, irrelevant, and immaterial and seek to construe a plain, unambiguous contract in writing.)

Question. In addition to holding this 160 acres of land, these payments entitled them to have rights of citizenship and all other communal rights both in land and in money with the Cherokees?

Answer. That's right.

Question. When this agreement was made, was anything said about the Cherokees having the right to bring in other people to share in these communal rights?

Answer. I did have no such knowledge. We did not know anything of that—only Cherokee people that's living right here.

Question. Do you know of anything else about this case?

Answer. No, sir.

No cross-examination.

WILLIAM ADAMS.

Sworn to before me this 7th day of December, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public.

I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, on the 8th day of December, 1898, at Nowata, Ind. T., hereby certify that the witness William Adams, was duly and properly sworn; that the answers to the questions put to him were taken down in his presence, and that they were read over to him and signed by him; that at the taking of said testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and William T. Hutchings, attorney for defendants.

Dated at Nowata, Ind. T., December 8, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for Northern Judicial District of the Indian Territory.

Deposition of John G. Pratt, for Claimants, Taken at Kansas City, Kans., on the 8th day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the case on which he is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. What is your name, age, place of residence, and occupation?

Answer. John G. Pratt; I am 84 years old and reside in Wyandotte county, Delaware township, Kans.

84 Question. Please state if you have any, and if any what, interest, direct or indirect, in this claim, and whether and in what degree you are related to the plaintiffs.

Answer. I have no interest in any way and am no relation to the plaintiffs.

Question. You were at one time Indian agent for the Delaware agency in Kansas, were you not?

Answer. Yes.

Question. Please state when.

Answer. From 1864 to 1868.

Question. Your commission commenced in April, 1864?

Answer. Yes.

Question. Where did you reside in Kansas when you were Indian agent?

Answer. Well, where I do now, and it was then the agency and went by that name—the Delaware agency.

Question. What is it called now?

Answer. Just a farmhouse.

Question. Is it not Delaware agency?

Answer. Yes.

Question. And your post-office is Piper, Kans.?

Answer. Yes; either that or Bonner Springs. We have a delivery there or at Piper.

Question. When did the question of moving the Delawares from Kansas first come to your attention? And please state as near as you can the circumstances.

Answer. They were asked to go in 1863 by the Government, not directly, but a talk of it.

Question. Do you remember who was agent in 1862 for the Delawares?

Answer. Yes; Fielding Johnson.

Question. Where were the headquarters of the agency then?

Answer. At my place.

Question. Didn't you assist Mr. Johnson in 1862 in getting up an Indian delegation at the request of the Government to search for lands?

Answer. Yes, I did; in 1862 and 1863—somewhere in there.

Question. And the Government submitted maps to you, did it not?

Answer. To him.

Question. One of the maps was of land in the Cherokee nation?

Answer. I find there were two delegations went to look; one went from Mr. Johnson, as agent, and one went under my direction. That is a little matter I found on the book. I looked over my old books, and that is correct.

Question. Where did the one go that went under Mr. Johnson's direction?

Answer. I don't know; I don't recollect. They went south and in various tribes, but nothing come of that, so I don't recollect.

Question. And where did the one go under your direction?

Answer. They went to the lands west of the Cherokee, and then I think there was a pointing out of land in the Creek nation; also what was called lost claims.

By Mr. HUTCHINGS:

Question. No man's land?

Answer. No man's land; that is simply from recollection, though.

85 Resumed by Mr. HARBY:

Question. When was the first time that you went to Washington with the Delaware delegation?

Answer. I think 1865.

Question. What did you go there for?

Answer. We went to deliberate about the removal of the Delawares.

Question. With whom did you deliberate in Washington?

Answer. Commissioner of Indian Affairs.

Question. Was there any delegation there from any other Indians at the same time that joined in the deliberation?

Answer. Not that time. There might have been, but we did not deliberate with any tribe; just the Commissioner of Indian Affairs.

Question. Do you know of any other delegation being there?

Answer. The Cherokees had a delegation also. They kept an attorney there, and there was most always some of the Cherokees there. I think there was then, but we didn't do business with them.

Question. Did you have anything to say to them?

Answer. Not that I had any cognizance of. The Indians might have talked together, but we didn't.

Question. When was the next time you went to Washington with the Delaware delegation?

Answer. I guess it was in the spring of 1866; that is my recollection; I think it was.

Question. At that time was there any other Indian delegation in Washington with whom you conferred?

Answer. You mean the Delawares?

Question. Yes.

Answer. Yes; the Cherokees were there.

Question. Can you mention any of the chiefs in that Cherokee delegation that was there in 1866 when you and the Delawares were there?

Answer. Yes.

Question. Please state whom you remember.

Answer. I remember William P. Ross was their attorney, their headman, and a man by the name of McDonald, and I think a man by the name of Bourrison. There were some others that were not of the delegation, but these I mention; McDonald and William P. Ross were of the delegation. Then there were other Cherokees there. William P. Ross was the whole thing, though, anyhow, but there was another man.

Question. Was Riley Keyes there?

Answer. I don't recollect that name.

Question. What position did Ross have in the delegation?

Answer. I understood him to be an attorney for the Cherokees.

Question. With regard to his prominence, what position did he have?

Answer. He was the principal figure. He was the chief in all business, and his word was taken and the others were quiet.

Question. Did the two delegations—the Delaware and Cherokee—have any conferences in Washington which you attended?

Answer. Always at the office of Commissioner of Indian Affairs. They had them there. The Cherokees and Delawares were present, but I was there.

Question. Were there any conferences which you did not attend?

86 Answer. I think not.

Question. What was the subject of these conferences?

Answer. It was an effort to select a piece of land on the part of the Delawares for them to remove to, and on the part of the Cherokees whether they should move into the Cherokee country.

Question. Did you have any conversation with William P. Ross as to the condition of the Cherokee treasury at that time?

Answer. I did not.

Question. Do you know anything about it?

Answer. I do not.

Question. Do you know what the Cherokee lands were worth at that time?

Answer. I do not, but I heard them spoken of as being very cheap, but that is all.

Question. Did you hear Chief Ross say anything about their value?

Answer. He was always very careful in his conversation.

Question. Where did these conferences take place?

Answer. In the office of the Commissioner of Indian Affairs.

Question. At Washington, D. C.?

Answer. At Washington, D. C.

Question. What propositions were made by the Cherokees?

Answer. Well, you know how it is with Indians. There was a great deal of waste paper and useless conversation, but as a result of the conversations the Cherokees made the proposition that the Delawares move on to their reservation and pay a head right which would give them a home, and this now was not definite to the Delawares. That did not amount to anything with them. Then they proposed to let them come in, and they should pay for what land they took—what land they wanted—and become citizens in that way; citizens of the Cherokee nation, I mean. That, again, to the Delawares was indefinite. They wanted to get lands, and those lands to be defined by metes and points that they should know when they were on their own land. They wanted to have it measured off to them. The Cherokees objected to that, and there was a great deal of conversation as to how they could satisfy the Delawares in becoming citizens and living on the Cherokee land. It was finally decided that they should pay out for the 160 acres of land to each

individual, and then pay a sum of money into the Cherokee treasury that would make the Delawares equal with the Cherokees in all their national funds, so that the Delawares would become Cherokees in a sense. They would be possessed of 160 acres of land; they would be possessed of an interest in the Cherokee funds and in all their possessions in the matter. They were to be Cherokees in every sense of the word, having all the privileges and rights that they had.

(Attorney for the defendant objects to so much of the foregoing answer as professes to testify with reference to the agreements made and entered into between the Delaware tribe and the Cherokee nation, April 11, 1867, because said agreement was reduced to writing and is complete and unambiguous and can not therefore be varied by parol testimony.)

Question. Did you have any conversation with Chief Ross, the Cherokee chief? What did he tell you the Cherokees would agree to?

(Objected to by attorney for defendant on the ground that it is hearsay and otherwise incompetent and irrelevant.)

87 Answer. He told me that the Cherokees objected to parting with any portion of their territory by selling it outright and having it divided off. They did not want to make a break in their possessions, but the Delawares, with the arrangement proposed, would be accommodated, he thought, to their satisfaction as well as if they did have it measured off for them, as it gave them all rights and privileges for the Cherokees, only they could not sell out. They could not part with it. It was an Indian contract, and the Cherokees could not sell unless the whole nation did so, but no part of it could be cut up in the sale and they did not want to let the Delawares in with the understanding that they could do that, but they would have their right, and when the Cherokees were disposed they would be dealt with as Cherokees. Their Delaware nationality was lost and merged in that of the Cherokee nation.

Question. What did he say as to the 160 acres for each man, woman, and child in the Delawares?

Answer. That conversation, now, was before the Commissioner, in conference, that they pay one dollar ($1) an acre and have assigned to each individual 160 acres, which would be $160 to every Delaware, based on the registry as to the number of Delawares; that is, the registry that was before the Commissioner of Indian Affairs.

Question. What was said as to the title the Delawares would have to this land, this 160 acres?

(Attorney for defendant objects to the foregoing question because the title is clearly defined in the agreement and can not be varied by parol testimony, and, further, because the question is one of law and not fact.)

Answer. Well, the title was to be contained in this agreement. If the Delawares accepted that each individual Delaware should be entitled to 160 acres of land, my understanding was that it defined

the matter clearly that they became Cherokees, and the treaty ratified was the obligation of the Cherokees to the Delawares. That agreement was ratified by Congress and then the Delawares were Cherokees. The document gave evidence of that act.

Question. Were they to have anything in addition to this 160 acres of land for each Delaware?

Answer. Why, the whole Cherokee possession of whatever kind; the Delaware, by this agreement, became an equal owner.

Question. This was in addition to his right to the 160 acres?

Answer. Why, yes; they put their money in there in addition to the land. They paid to compare with the Cherokee funds and possessions of whatever kind; that was the understanding.

Attorney for the defendant objects to all the answers of the foregoing question, and asks that it be withdrawn from consideration in this case, because it is an endeavor to put a construction on a written instrument of parol testimony, and by a witness who is not competent to speak as to such matter.)

Question. Now, I must ask you to again tell me how the title of the Delaware to this 160 acres was defined. I mean especially with regard to the inheritance in his children. Was there to be any such right?

(Attorney for defendant objects to this question because it is incompetent and irrelevant, and more particularly because the contract upon which this suit is based speaks for itself and can not be varied by parol testimony.)

88 Answer. That was distinctly talked about. One of the reasons why the Delawares wished their land defined, that there was to be no questions of this kind arise. They wanted to be possessed of a home for themselves and their children, and they did not want to have it end with their lives, but it was to be a continued possession of the Delawares and their children.

Question. You refer now to the 160 acres?

Answer. I do.

Question. Did Chief Ross say anything to you on this point as to what the Cherokees would be willing to do?

Answer. As an individual outside of the commission?

Question. Yes.

Answer. I don't recollect that he did. We talked in general a great deal, but I don't recollect.

Question. What did he say at any time?

Answer. His conversation was as I have stated, that the Cherokees objected to defining and splitting up their territory. He said, "You Delawares can go down there and live with us and have everything we have and it is yours forever, and you would not have any more if you had the land marked off." This is their idea, and they would not do that. They would not do it anyhow, but they let them in on these plans.

(Attorney for defendant objects to the foregoing answer as being incompetent and irrelevant, because all the conversation and oral agreements with reference to the contract were merged into the land agreement of April 11, 1867, upon which this suit is based.)

Question. Did they let them in on the understanding that the children were to inherit the father's right to the 160 acres?

Answer. Yes.

(Same objection as heretofore.)

Question. Did they let them in on the understanding also that in return for all these payments they would have in addition to the 160 acres their right, both communal and otherwise, that the Cherokees themselves had in the Cherokee nation?

Answer. That was the understanding.

Question. That was what the Cherokees finally submitted as their proposition?

Answer. Yes.

Question. These propositions and these final propositions were submitted in the way of conference with the Commissioner of Indian Affairs?

Answer. Yes.

Question. You were present?

Answer. I was present.

Question. This final proposition was made to the Delawares in 1866, at which time they went home, didn't they?

Answer. Yes; they went home.

Question. And you went with them?

Answer. Yes.

Question. While the Delawares were in Kansas they had for the purpose of their tribal government chiefs and counselors. Is that right?

Answer. Yes; that is right.

Question. How did the chiefs and counselors disseminate news amongst the Delaware nation throughout the nation?

89 Answer. Now, that depends upon what the subject was for distribu[illegible].

Question. Ma[illegible]s of importance?

Answer. If it was matters that were connected with the United States Government, it had a course; it had a way.

Question. What was that way?

Answer. Public business—that was with the Government. An agent was instructed and he, through the interpreter, notified the chiefs and counselors of the business that was to be considered.

Question. When there was a matter which was to be conveyed to the Delaware people themselves, how did the chiefs and counselors convey that matter?

Answer. They either directed the Government interpreter to go and notify or they sent their counselors around; their headmen and counselors to notify the people.

Question. There was a constant visitation going on between the chiefs and counselors and the people, was there not?

Answer. Yes; they were familiar with them.

Question. Was the fact of this agreement, or rather this offer for an agreement which you have related, was it made by the Cherokees in Washington to the Delawares in Washington and conveyed to the people?

Answer. Every man understood it.

Question. How was it conveyed?

Answer. I, as agent, notified all that I came in contact with and took pains to have it done. I sent the interpreter, who was the Government interpreter, sent him to the chiefs with a notice that there was business from Washington Government to be transacted and for them to meet for that purpose on a given day, appointing the time. This announcement was made to the chiefs and counselors in particular, and they to the whole people.

Question. Did you explain to the individuals what this offer for an agreement was, and what it would be as you have stated in this deposition?

Answer. I did.

Question. Was it not a habit of the Delaware people to talk amongst themselves concerning matters which came up that would affect the whole tribe?

Answer. Yes.

Question. They were particularly given to dwelling on these things amongst themselves?

Answer. Yes.

Question. Each man wanted his say?

Answer. Yes.

Question. Did the Delaware chiefs who were in Washington with you tell the people what this offer for an agreement was; what it amounted to?

Answer. Yes.

Question. And did they tell it, giving it the consideration and effect as you have set forth in your deposition?

(Attorney for defendant objects to the foregoing question on the ground that it is incompetent, irrelevant, and immaterial.)

Answer. That is my understanding.

Question. Are any of these chiefs or counselors who took part in that agreement now living?

90 Answer. I think they are all dead.

Question. When these chiefs and counselors spoke to the people with regard to this agreement, did they say to them what you have told me to-day was the terms of the agreement in Washington?

(Attorney for defendant objects to this question upon the ground that the declarations of either party to the contract or their agents are incompetent to vary or construe that contract after it is made.)

Answer. They told them and I told them.

Question. Now you made a list of all the Delawares who would agree to go to the Indian Territory?

Answer. Yes.

Question. That list was inscribed in a book and you sent a copy of that to Washington to the Department of Indian Affairs?

Answer. Yes.

Question. These Delawares who went to the Cherokee territory were entitled to certain tracts of land in Kansas, were they not, before they went?

Answer. Yes; they owned their homes.

Question. Each one had how many acres?

Answer. Well, that was indefinite, but 80 acres to an individual had been set off to them.

Question. And they were paid for each 80-acre tract by the Government of the United States?

Answer. Yes.

Question. How much was each one to receive?

Answer. Two hundred dollars.

Question. This money was sent to you at various times to be disbursed to the Delawares?

Answer. Yes.

Question. Will you state the manner of payment made by you?

Answer. Of this money?

Question. Yes.

Answer. I paid it to individuals by name as it appeared on the roll.

Question. Did you pay any in Kansas?

Answer. Yes.

Question. Did you pay any in the Indian Territory?

Answer. I did.

Question. Did you take any receipts for your payment?

Answer. I did; I took a receipt for all, every one.

Question. Did you let the Delawares know that you were going to disburse this money to them?

Answer. Why, yes; just as I notified about any other business. They were notified and understood it, and came together for that purpose.

Question. These receipts that you got, what did you do with them?

Answer. They were sent to Washington.

Question. In what department?

Answer. Commissioner of Indian Affairs.

Question. With the exception of the dead and missing Delawares, these receipts represent all the Delawares that located in the Indian Territory?

Answer. No; it did not. For this reason, they were not there, all of them. They belonged and had communal rights, but they were not all present.

91 Question. Did not all the Delawares that agreed to go to the Indian Territory go there with the exception of those that died or disappeared?

Answer. Yes; that is so.

Question. And you paid those that went there the money that was coming to them?

Answer. Yes.

Question. And these receipts you filed in Washington?

Answer. Yes.

Question. So that those receipts which are not on file are not there because you can not find or could not find the Indians to receive the money?

Answer. That is it.

Question. And you found all the Delawares that succeeded in getting to the Indian Territory?

Answer. Yes.

Question. To the children you paid the money by giving it to their natural guardians?

Answer. Yes.

Question. And took receipts?

Answer. Yes.

Question. You lived with the Delaware Indians almost all your life, haven't you, or the greater portion of it?

Answer. All but about twenty-one years.

Question. You are well known to all of them and they all know you well?

Answer. All that were living when I went down there; there were some born since.

Question. I forgot to ask you, Mr. Pratt, if you were not a minister?

Answer. Yes.

Question. How long have you been a minister?

Answer. Since 1842.

Question. Did you ever meet a Delaware Indian who had not received his money that was coming to him from you?

Answer. No, sir.

Question. This agreement which was pressed in 1866 was supposed to have been put into writing and signed in 1867. Is that right?

Answer. Yes.

Question. Who prepared that agreement when it was put into writing?

Answer. Well, it was prepared in the office of the Commissioner of Indian Affairs.

Question. You did not know any Delaware or Cherokee Indian that had sufficient literary or legal ability to prepare an agreement of that kind, did you?

Answer. I think William P. Ross.

Question. He did not prepare it, did he?

Answer. No, sir.

Cross-examination by Mr. HUTCHINGS:

Question. Do you know whether or not the agreement frequently referred to in your testimony was read over to the two delegations representing the Delaware and Cherokee tribes of Indians?

Answer. It was read over repeatedly; read over and corrected and altered and read over again several times, and each party put in his suggestions, until they finally harmonized.

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Question. Then, as I understand, the agreement, as finally signed, expressed the wishes of both sides, and both sides were fully satisfied with all it contained?

Answer. No; the Delawares were not satisfied, but they signed because it was the best they could do. They wanted to own the land outright.

Question. They did not contend at any time afterwards that the agreement did not fully express what they intended it to express, did they?

Answer. No, sir; I did not hear anything of that kind.

Question. How many of the Delawares who could speak English signed the agreement?

Answer. (Refers to treaty.) John C. Conner, John Sarcoxie, Charles Journeycake. They all spoke English so that they could hold a conversation, but Charles Journeycake and Isaac Journeycake was Government interpreter, and John Connors was the interpreter for the United States Army and Mexico and all through. He spoke English. He was interpreter for the United States Army.

Question. Do you know why the Delawares wanted to leave Kansas and give up lands which they held in severalty?

Answer. They did not particularly want to go—really did not want to go; but the wiser part of the nation thought it best to go and get beyond the reach of towns and where the young men and women could get whisky and hurt themselves. They wanted to get beyond that, and a good many of them said they did not want to live with white folks; they were Indians, but the best part of the nation thought they ought to go away from so much opportunity to be drunk; and there was this about it too: A wild country suited the wild ones for hunting, and they would rather be there, and they consented to go for that reason, as there was plenty of game and fish there then.

Question. Is it not true that the real Indian thought then and thinks now that no greater evil can befall his tribe than to have them forced to take their lands in severalty, with a title that they can alienate?

(That is objected to for the reason that it is requesting the witness to give his opinion of the personal preference of the Indians, and for the additional reason that it is immaterial and irrelevant.)

Answer. The native Indian—that is correct; the untrained Indian, I mean.

Question. Did not the Delawares first contract with the Government to be settled there in the Choctaw and Chickasaw or Creek countries, so anxious were they to again assume relations with people who still held their lands under the ancient customs and usages of the Indian?

(That is objected to because it assumes a state of facts which has not been proven to exist and bases the question on those facts, and for the additional reason that it is immaterial and irrelevant, and also because it asks for the witness to make a conclusion from unrelated evidence, not to give a relation of facts.)

Answer. The Delawares visited not only tracts of land that were pointed out to them, but they made a general journey looking at the country. They looked at the pieces you referred to, but the idea of division was not in their minds. They were seeking
93 a country that suited them, and took this Cherokee offer as being land that suited them better than the other.

Question. Have you any idea how much land the Cherokees had *per capita?*

Answer. I don't know anything about it. I did at the tine know about their homestead; but then they had some property in North Carolina and some in other States, but the definite amount I do not know. I think they had some in Georgia, where they came from. Some Cherokees reside still in North Carolina. I know about that, because, in talking this matter up, the Delawares knew of the property they had in different places around, and were going to be in possession of and owner of it if the treaty was ratified.

Question. What did the Delawares pay the Cherokees for any land in excess of 160 acres apiece?

Answer. I don't know. I don't know the number they really paid for, because I have not been there since. I don't live there now.

Question. The agreement was that they pay the Cherokees for 160 acres of land for each man, woman and child?

Answer. Yes, as I said. I have given that testimony already. They should pay into the Cherokee treasury an amount of money to make them equal with the Cherokees in all their possessions, money, and property.

Question. Don't you know, Mr. Pratt, that the money they were to pay into the treasury was simply for the purpose of making them equal in the national fund of the Cherokee nation, and that the agreement expressed it in this way: "And the said Delawares further agree that there shall be paid from their funds now or hereafter to come into possession of the United States a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares, registered as above mentioned and removed to the Indian Territory, sustains to the whole number of Cherokees residing in the Cherokee nation," and as to that part, don't you further know that it stated that when they so paid that amount into the treasury that they should become members of the Cherokee nation, with the same rights and immunities and the same

participation, and no other, in the national funds as native Cherokees?

(That is objected to because it is confusing, and because there is more than one question in the interrogatory submitted to the witness, and because he can not be called upon to analyze the meaning of the interrogatory and answer accordingly.)

Answer. My understanding was as I have expressed it in the testimony I gave and the way it was so understood by the Indians at the time.

Question. If a merchant had $5,000 in cash in his business and $5,000 in goods and you made a bargain with him to pay into the business as much as he had in it, do you think you would have completed that bargain by simply putting $5,000 in cash—in other words, if you simply put in the $5,000, would you not be getting one-half interest in the goods for nothing?

(That is objected to for the reason that it is a question not bearing upon any issues in the action of this casue, is not proper cross-examination in any evidence that has been given in the case, and for the additional reason that the witness's theoretical line of contract in the proposed business transaction is immaterial.)

94 Answer. I must be very thick-headed, because I can not see the point. If a merchant has a stock of goods valued at a certain amount, and then he has a cash deposit in addition, I become a partner with him by paying as much in comparison with his stock and his money. I have a full interest.

Question. Yes; but you ought to put as much money and as much stock, too.

(Objections renewed.)

Answer. Yes.

Question. Well, then, if the Delawares only paid into the treasury as much cash *per capita* as the Cherokees already had in the treasury *per capita* and only paid them per 160 acres of land *per capita*, when the Cherokees had upward of 1,000 acres *per capita*, the Cherokees then got no consideration from giving to the Delawares the excess *per capita* lands over 160 acres, did they?

(Attorney for defendants [plaintiffs?] objects to above question, because it is argumentative; because it is based upon facts which appear to stand alone, but which have not been proven to exist, except in connection with other facts, namely, that it has been proven that consideration for the contract was the money paid into the Cherokees' treasury and also the excessive price paid for the 160 acres of land, much more than the Cherokees were offering it at the time to the other people.)

Answer. I understand that the Delawares did pay besides the $160, or for 160 acres of land—they did pay into the Cherokee treasury for the estimated value of all their possessions.

Question. Oh, no.

Answer. And the cash on hand. That is the way they understood it.

Redirect examination by Mr. HARBY:

Question. In the second answer to the second question on cross-examination, when you said that they consented because it was the best they could do and that they wanted to own the land outright, you have not forgotten that you said that they were to own the land so that their children were to own it after them, have you?

Answer. No, sir.

Question. When you say they wanted to own the land outright, do I understand you to mean that they wanted the land divided?

Answer. Sectioned off; yes.

Question. Segregated?

Answer. Yes.

Question. And that is what you mean when you say they wanted to own the land outright and that would give them the privilege of disposing of it any time they wanted, and as it is they are subject to the will of the Cherokees and they are to submit to them?

Answer. Yes.

Question. They can not dispose of this land until it is segregated?

Answer. No; until it is the will of the Cherokees.

Question. But they have obtained from the Cherokees such a title that when it is segregated they can dispose of it?

Answer. I understand this ratified treaty conveys that to them.

JOHN G. PRATT.

Sworn to before me this 8th day of December, 1898.

HARRIET A. ANDREWS,
Notary Public, Jackson County, Mo.

95 STATE OF MISSOURI, }
County of Jackson, City of Kansas. }

I, H. A. Andrews, notary public in and for the county of Jackson, in the State of Missouri, hereby certify that the witness, John C. Pratt, was duly and properly sworn by me prior to giving his testimony, and that the answers to the foregoing questions were duly put to him and were taken down in his presence, and that the taking of said deposition was attended by Marx E. Harby, counsel for plaintiffs, and William T. Hutchings, counsel for defendants, and that said deposition was read over by him.

Given under my hand and seal at Kansas City, State of Missouri, on the 8th day of December, 1898.

[SEAL.] HARRIET A. ANDREWS,
Notary Public, Jackson County, Mo.

Deposition of Sally O. Smith for Claimants, Taken at Wagoner, Ind. T., on the 13th Day of December, A. D. 1898.

Claimants' counsel, Marx E. Harby; defendants' counsel, William T. Hutchings.

The witness having been duly sworn to tell the truth, the whole truth, and nothing but the truth relative to this case in which she is to testify, testifies as follows:

Direct examination by Mr. HARBY:

Question. Please give your name, age, residence, and occupation.

Answer. My name is Sally O. Smith; I am 58 years of age; I live at Nowata, Ind. T., and I run a farm.

Question. Tell whether you have any interest or connection in this case, direct or indirect.

Answer. I am one of the plaintiffs in this case.

Question. Are you one of the registered Delawares that lived in Kansas?

Answer. Yes, sir.

Question. When was it that you first heard of the agreement that the Cherokees offered to make in Washington for the Delawares to come down to the Indian Territory?

Answer. It was about 1866.

Question. State all the circumstances of that that you remember.

Answer. It don't seem like I remember much of anything only that my people came down here to look after a location.

Question. What was your father's name?

Answer. Isaac Journeycake. My husband's name was John T. Smith. I was married in 1859, in Kansas.

Question. When was it that you first heard of the agreement that the Cherokees wanted to make with the Delawares, after the delegation had returned from Washington in 1866?

Answer. It was in 1866. I heard my father and husband talking over this, asking us married ones what we thought about it. I don't remember the time of the year.

Question. Tell us what your father told you the agreement was.

96 Answer. He said they had come to the conclusion that they would purchase land down here and wanted us to tell what we thought about it, and I, for one, asked them in what way it was we would go there and make it our home, and he said why we would go and buy us homes, of course. On that I told him I would leave it entirely with him, because I knew he would try and work for the advantage of his children, and we would be willing to do just exactly as he thought best. He said we would have equal rights here and buy so much land to each head and have our rights established here in addition to our owning the land.

Question. Did your father say this was a proposition coming from

the Delawares to the Cherokees, or was it coming from the Cherokees to the Delawares?

Answer. From the Cherokees to the Delawares. He said that the Cherokees wanted to sell this land at $1 an acre; that's what he said. He said also that the Cherokees wanted the Delawares to pay a certain amount into the treasury, because when they were talking about that I said to my husband, why would we have to take our funds and pay into their treasury, and he said because the Cherokees were bankrupt; that they were out of funds.

Question. Did your father tell you what rights the Delawares would receive in exchange for paying down an amount equal to the $1 an acre, and also paying their proportionate amount into the Cherokee treasury?

Answer. He said we would have equal rights in every respect that the Cherokees had. He said that we would get each 160 acres, and that we would have in addition to that as much right in the funds and lands of the Indian Territory as a Cherokee had. My father told me that this was the offer made to the Delawares by the Cherokees at Washington.

(Counsel for defendants objects to this question and all of the above questions, and asks that the answers and questions be withdrawn from the record and the attention of the court, because there is no mention of such a thing in the agreement and consequently there can be no call to construe it to include that which is not in any way set forth, and because the agreement is in writing and not ambiguous and this testimony is not competent to vary a written agreement, and also because the questions and answers are incompetent, irrelevant, and immaterial in this that most of them are hearsay, and all of them tend to vary a written contract.)

Question. Did your father explain to you what kind of title or ownership you Delawares would have in those plats of 160 acres?

Answer. My father said that we were to buy the land outright. That if we accepted those offers made by the Cherokees we would own the land, so that when we died our children or their heirs would get it.

Question. Were you acquainted with the Delawares that lived in Kansas?

Answer. Yes; I was pretty well acquainted amongst them. I knew most all of them pretty well. Most of the leading men were connections of my family. I talked with them and associated with them.

Question. Did you hear this Delaware-Cherokee agreement talked about by them and between them and the members of the council in the Delaware nation?

Answer. Yes, sir; it was quite an excitement amongst both men and women.

97 Question. And who explained to them the meaning and extent of the offers made by the Cherokees?

Answer. Mr. Journeycake, for one, and John Connor, Jin Connor, and all of their headmen.

Question. What did they say to them?

Answer. They said just what was told to me by my father; that the Cherokees wanted to sell to the Delawares 160 acres of land for each man, woman, and child in the Delaware nation, and also in addition to that all the rights which a Cherokee citizen had or would have in the funds, lands, and all property of the Cherokee nation.

(Counsel for defendants renews objection.)

Question. Your father was a brother of Mr. Charles Journeycake?

Answer. Yes, sir.

Question. Both signed the agreement?

Answer. Yes, sir; because my father was United States interpreter and he had to sign the papers.

Question. Those things that you have told were stated to the Delawares by the chiefs and council?

Answer. Yes, sir; I was present once during council. I don't suppose the whole tribe heard it, but a great many of them did, and it went from one family to the other and was explained to them.

Question. And you heard the people talking of it and repeating those things?

Answer. Yes, sir; they talked over those things amongst themselves. They were talked over in council. One repeated it to another. Everybody seemed to think they would hold the land so that when they died their heirs would get it, and in addition to that they would get as much land and as much money out of the Cherokee lands and funds as a Cherokee citizen would get, and that was the reason they agreed to come down here.

(Counsel for defendants renews his former objection.)

Question. Do you remember that a roll of the Delawares or a list of the Delawares who were coming down here was made by Mr. Pratt, the Indian agent?

Answer. Yes, sir.

Question. Don't you remember whether any of those that were on the roll died before the Delawares got down to the Indian Territory?

Answer. I don't remember that.

Question. You remember after they got here and before May, 1869, a good many died.

Answer. Yes, sir.

Question. They had fever, had they not?

Answer. They had typhoid, malaria, and chills.

Question. About how many of them died, would you say?

Answer. I don't know, I am sure. They died like sheep. I myself lost one sister. She had a congestive chill.

Question. Why did not the Delawares, when so many of them died before this payment was made, object to paying $160 for every enrolled Delaware?

Answer. Well, they thought when they bought the land and paid for it, that the heirs would get it after them; that when we paid for the land we thought it was ours.

(Counsel for defendants objects to this question and all of the above questions and asks that the answers and questions be withdrawn from the record and the attention of the court, because
98 there is no mention of such a thing in the agreement, and consequently there can be no call to construe it to include that which is not in any way set forth, and because the agreement is in writing and not ambiguous, and this testimony is not competent to vary a written agreement; and also because the questions and answers are incompetent, irrelevant, and immaterial in this, that most of them are hearsay and all of them tend to vary a written contract.)

Question. Do you know of any Delaware Indian living who was a chief of the nation or council in Kansas, or are they all dead?

Answer. I believe they are all, every one of them. The last chief was Mr. Journeycake. He died in the Indian Territory.

Question. When the Delawares came here from Kansas, they selected their land, did they not?

Answer. Yes; each one selected his 160 acres, and those that had wives and children selected 160 acres for each child and also for his wife. They tried to get places where they could take them all together, and when they could not do that, they tried to get places elsewhere.

Question. Did they improve their places?

Answer. Yes, sir; they made farms, built houses and fences, and so on.

Question. Can you tell me about how the value of their improvements run?

Answer. Well, from a few hundred dollars up to several thousand dollars. Mine is worth $1,500.

Question. How many were in your father's family when you came to the Indian Territory?

Answer. There were seven—himself, wife, and five children. He had four married children in addition to that.

Question. The Delawares built schools and churches, did they not?

Answer. Yes, sir.

Question. You have seen them?

Answer. Yes, sir.

Question. Did the Cherokees help build any of those churches and schools?

Answer. No, sir.

(Counsel for defendants objects to this question and all of the above questions, and asks that the answers and questions be withdrawn from the record and the attention of the court, because there is no mention of such a thing in the agreement, and consequently there can be no call to construe it to include that which is not in any way set forth, and because the agreement is in writing and not ambiguous, and this testimony is not competent to vary a written agreement; and also because the questions and answers are incompetent, irrelevant, and immaterial in this, that most of them are hearsay and all of them tend to vary a written contract.)

Question. Mrs. Smith, please state whether you know of any other matter relative to this case.

Answer. I have stated about all I know.

SALLIE O. SMITH.

Sworn to before me the 13th day of December, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for the Northern Judicial District of the Indian Territory.

99 NORTHERN JUDICIAL DISTRICT OF THE INDIAN TERRITORY, *Town of Wagoner.*

I, P. H. Wilkerson, a notary public in and for the northern judicial district of the Indian Territory, hereby certify that the witness, Sallie O. Smith, was duly and properly sworn; that the answers to the questions put to her were taken down in her presence and in my presence, and that they were read over to her and signed by her; that at the taking of said testimony I was attended by Marx E. Harby, of counsel for plaintiffs, and William T. Hutchings, attorney for defendants.

Dated at Wagoner, Ind. T., December 13, 1898.

[SEAL.] P. H. WILKERSON,
Notary Public for the Northern Judicial District of the Indian Territory.

Deposition of John R. McIntosh, for Claimants, Taken at Washington, D. C., on the 29th Day of March, A. D. 1899.

Claimants' counsel, Marx E. Harby; defendants' counsel, John J. Hemphill.

JOHN R. MCINTOSH, having been produced as the witness on behalf of the plaintiffs, was by me sworn before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and said that his name is John R. McIntosh; that his occupation is that of a merchant at Chelsea, Ind. T.; that he is 33 years of age, and that his place of residence is Chelsea, Ind. T.; and that he is not interested, directly or indirectly, in the claim which is the subject of inquiry in said cause, and that he is not related to the plaintiffs.

Thereupon the said John R. McIntosh was examined by counsel for the plaintiffs, and in answer to interrogatories testified as follows:

1 question. Mr. McIntosh, whereabout were you born?

Answer. In the Cherokee nation.

2 question. Are you a Delaware or a Cherokee?

Answer. A Cherokee.

3 question. Your father is a Cherokee?

Answer. Yes, sir.

4 question. Have you resided in the Cherokee nation all your life?

Answer. Yes, sir.

5 question. Have you held any public office there?

Answer. Yes, sir.

6 question. What was the first office you held there?

Answer. Clerk of the senate—engrossing clerk.

7 question. When was that?

Answer. In 1893 and 1894.

8 question. What was the next office you held after that?

Answer. Census enumerator for the northern half of Cooweescoowee district.

9 question. Did you hold any other office besides that?

Answer. Yes, sir. In 1897 I was elected to the lower branch of the national council.

10 question. Any other office besides those?

Answer. No, sir.

100 11 question. Do you hold any office there now?

Answer. My term is not expired yet as a member of the council.

12 question. When was the last census taken in the Cherokee nation that was authenticated?

Answer. In 1880. That is the only authenticated census we had.

13 question. Have you a copy of that census here?

Answer. Yes, sir.

14 question. I hand you a printed book entitled "Authenticated Rolls of 1880, Cherokee Nation, Illinois District." Will you please look at it and see if that is part of the authenticated census of 1880 of the Cherokee nation?

Answer. That's one district.

COUNSEL FOR PLAINTIFFS: I offer that in evidence. The same is marked "Exhibit A" for identification.

(Counsel for defendants reserves his objections.)

15 question. I show you a book entitled "Authenticated Rolls of 1880, Cherokee Nation, Tahlequah District," and ask you if that is the census for Tahlequah district for 1880?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence. The same is marked "Exhibit B" for identification.

16 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Saline District." Is this a census for that district for that year?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer this in evidence. The same is marked "Exhibit C" for identification.

17 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Canadian District," and ask you if that is the census of 1880 for that district?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit D" for identification.

18 question. I show you a book titled "The Authenticated Rolls of 1880, Cherokee Nation, Cooweescoowee District." Is that the census of that district for 1880?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit E" for identification.

19 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Sequoyah District." I ask you if that is the census for Sequoyah district for 1880?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit F" for identification.

20 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Delaware District." Is that the census for Delaware district for 1880?

Answer. Yes, sir. The names of the first 138 citizens, however, are missing, but the total at the end of the book is correct.

COUNSEL FOR PLAINTIFFS: I offer this in evidence, and the same is marked "Exhibit G" for identification.

21 question. I show you a book titled "Roll of Orphans, Cherokee Nation, 1880." Is that a list of the orphans in the Cherokee nation in that year?

101 Answer. That is a list of the orphans from the districts of Saline, Delaware, Cooweescoowee, Canadian, Sequoyah, Going Snake, and Flint, as appears upon the cover of the book. These were all the orphans attending school, and those not attending school were at home with their guardians.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit H" for identification.

22 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Flint District." Is that a list of the Cherokees for that district for that year?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit I" for identification.

23 question. I show you a book titled "Authenticated Rolls of 1880, Cherokee Nation, Going Snake District." Is that the census for that district for that year?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit J" for identification.

24 question. There were a number of people that were admitted and readmitted to Cherokee citizenship by the national council and commissions in the year 1880 and since, were there not?

Answer. Yes, sir.

25 question. Have you a list of those people?

Answer. I have a book.

26 question. This book which I show you, indorsed, admitted and readmitted, is that the book you refer to?

Answer. Yes, sir.

27 question. This book is a list of persons admitted and readmitted from the year 1880 up to the latest date that appears in the book, is it not?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "K" for identification.

28 question. There were a number of people from North Carolina who removed to the Cherokee nation under an act of the national council which was approved December 30, 1880, were there not?

Answer. Yes, sir.

29 question. I show you a book titled "North Carolina Cherokees." Is that the book?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and the same is marked "Exhibit L" for identification.

30 question. I show you a book titled "Delawares," and ask you what it is and where you got it?

Answer. This book was furnished to me by an act of the national council of the Cherokee nation.

31 question. What did they furnish it to you for?

Answer. I was appointed census enumerator, and it was to assist me in taking the census. It was supposed to be a copy of the Delawares who originally moved into the Cherokee nation.

COUNSEL FOR PLAINTIFFS: I offer it in evidence, and it is marked "Exhibit M" for identification.

32 question. I show you a book titled "Shawnees," and
102 ask you if that is a register of the members of the Shawnee tribe of Indians who located in the Cherokee nation prior to the 10th of June, 1871, within two years from the 9th day of June, 1869, in accordance with a certain agreement which is set out in the book?

Answer. Yes, sir.

COUNSEL FOR PLAINTIFFS: I offer that in evidence, and it is marked "Exhibit N" for identification.

33 question. All these books marked exhibits, for distinction, A, B, C, D, E, F, G, H, I, J, K, L, M, and N, were furnished to you by an act of the national council to assist you in preparing the census of the Cherokees, is that so?

Answer. Yes, sir.

34 question. In what year was that?

Answer. In 1896.

35 question. And they were given to you by the national council as being a true list of the Cherokee citizens?

Answer. Yes, sir.

36 question. And they instructed you to use those books in making your census, and not to inscribe anyone whose names were not on the list in those books or who was not a de-cendant of some one who was on those books, is that so?

Answer. Yes, sir.

37 question. Were these instructions in writing?

Answer. The act is the instructions, and the chief also gave instructions how to enroll. A separate book was made for Cherokees by blood, and a separate one for Shawnees, and so on.

38 question. Did you proceed to take the census?

Answer. Yes, sir.

39 question. What happened to it after you took it?

Answer. When we got through with our work we delivered it to the principal chief, as authorized to.

40 question. Has that census that you took ever been approved?

Answer. The work of the committee has been adopted, but the rolls have never been authenticated.

41 question. When you say the rolls have never been authenticated, explain just what you mean.

Answer. Well, it means authenticated—just simply the passing of an act authenticating the rolls.

42 question. You mean, then, that before a census is adopted as a true census it is necessary for the national council to pass on it adopting it?

Answer. Yes, sir.

43 question. And this has not been done with the census you took?

Answer. No, sir.

The said witness was then cross-examined by the counsel for defendants, and in answer to interrogatories testified as follows:

1 cross-question. When were these books given to you that you heve offered as exhibits?

Answer. In September, 1896.

2 cross-question. Where have they been since that time?

Answer. I have had them at home.

3 cross-question. Is that all that were given to you?

Answer. Yes, sir.

4 cross-question. I see some corrections there in red ink. Who made these corrections?

103 Answer. The department.

5 cross-question. Which department?

Answer. The Cherokee nation.

6 cross-question. Was that done when you received them?

Answer. Yes, sir.

7 cross-question. How were those authenticated?

Answer. They passed an act showing that these rolls should be the official rolls of the Cherokee nation for that year.

8 cross-question. Has there been any authenticated since that time?

Answer. No, sir.

9 cross-question. Were these corrections made after the authentication or prior thereto?

Answer. Those in red ink were made by the executive department of the Cherokee nation after the authentiction. They are simply copies. Some of the corrections are errors in printing and some few names left out, and some are errors in comparing with the regular rolls. That's the way these red ink places appear.

COUNSEL FOR PLAINTIFFS: I now offer in evidence all of plaintiffs' exhibits that were marked for identification.

No objection being made, they are received in evidence and marked accordingly, as follows: Exhibit A, March 29, 1899; Exhibit B, March 29, 1899; Exhibit C, March 29, 1899; Exhibit D, March 29, 1899; Exhibit E, March 29, 1899; Exhibit F, March 29, 1899; Exhibit G, March 29, 1899; Exhibit H, March 29, 1899; Exhibit I, March 29, 1899; Exhibit J, March 29, 1899; Exhibit K, March 29, 1899; Exhibit L, March 29, 1899; Exhibit M, March 29, 1899; Exhibit N, March 29, 1899.

COUNSEL FOR PLAINTIFFS: I offer in evidence the constitution and laws of the Cherokee nation, published by authority of the national council revised, amended, codified, and prepared by an act of the national council on the 19th November, 1874.

No objection being made the same is received in evidence and marked "Plaintiffs' Exhibit O."

COUNSEL FOR PLAINTIFFS: I offer in evidence acts and resolutions passed and enacted at the regular term of the national council, 1877, and the extra session of 1878.

No objection being made the same is received in evidence and marked "Plaintiffs' Exhibit P."

COUNSEL FOR PLAINTIFFS: I offer in evidence the compiled laws of the Cherokee nation, published by authority of the national council, printed at Tahlequah, Ind. T., by the National Advocate Print, in 1881.

No objection being raised the same was received in evidence and marked "Plaintiffs' Exhibit Q."

COUNSEL FOR PLAINTIFFS: I offer in evidence the laws and joint resolutions of the Cherokee nation, enacted during the regular and special sessions of the years 1881, 1882, and 1883, published by authority of an act of the national council, by E. C. Boudinot, Jr., printer at Tahlequah, Cherokee nation, in the year 1884.

No objection being raised the same is received in evidence and marked "Plaintiffs' Exhibit R."

COUNSEL FOR PLAINTIFFS: I offer in evidence the constitution and laws of the Cherokee nation, published by an act of the national council, published by the Folly R'y Printing Co., Parsons, Kans., 1893.

No objection being raised the same is received in evidence and marked "Plaintiffs' Exhibit S."

104 It is stipulated and agreed between counsel for plaintiffs and counsel for defendants that Plaintiffs' Exhibits O, P, Q, R, and S be not filed until the close of the plaintiffs' case, and the plaintiff stipulates to select and identify the parts and sections of Exhibits O, P, Q, R, and S which he desires to have printed with the remainder of this case.

It is further stipulated that the said Exhibits O, P, Q, R, and S may be inspected on demand by the counsel for defendants, and such extracts or selections shall also be received in evidence and printed in the case if necessary.

By the COMMISSIONER:

Question. Do you know of any other matter relative to the claim in question? If so, state it.

Answer. I know of nothing more.

JNO. R. McINTOSH.

DISTRICT OF COLUMBIA, *City of Washington,* } ss:

I, Erastus S. Rockwell, a commissioner of the Court of Claims, of Washington, D. C., certify that at the time and place aforesaid John R. McIntosh, witness on behalf of the plaintiffs in the above-entitled cause, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and that his answers were taken down in my presence, and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this the 29th day of March, 1899.

[SEAL.] ERASTUS S. ROCKWELL,
Commissioner, Court of Claims.

104½–236 PLAINTIFFS' EXHIBITS A TO J, INCLUSIVE.

These exhibits are the authorized rolls of 1880 of the Cherokee nation for various districts and show the names, nativity, age and sex of the Indians upon said rolls, being in all 20,283 Indians described therein, including 338 orphans shown in Exhibit H. Said exhibits in full are on file in the Court of Claims, but, by consent, are not printed here in full.

236½–266 PLAINTIFFS' EXHIBIT K.

This exhibit is a list of persons admitted or re-admitted to Cherokee citizenship by the national council and commissions on citizenship in the year 1880 and since that year.

This list shows the name of each person therein, the sex, date of admission, whether by council or commission, whether admitted or readmitted, and whether such admission or re-admission was conditional or unconditional, and if on condition what were the particulars thereof. The number of persons on said list is 1922.

Said exhibit in full is on file in the Court of Claims, but, by consent, is not printed here in full.

266½ PLAINTIFFS' EXHIBIT L.

This exhibit is a list of North Carolina Cherokees who removed to the Cherokee nation on various dates between June 8, 1881, and December 7, 1881, under an act of the national council approved December 3, 1880. Said list shows the number of families, the name of each person, the nativity, age and sex. 170 persons are on said roll and it appears that 30 persons paid for their transportation.

This exhibit in full is on file in the Court of Claims, but, by consent, is not printed here in full.

267 & 268 PLAINTIFFS' EXHIBIT M, MARCH 29, 1899.

Delawares.

No.	Name.	Dead.	Living.
1	Milisa Hill	1	
2	Parcheparkelarqua	2	
3	Necontoohecund	3	
4	Lahpatiah		1
5	John Wilson	4	
6	Waymelartiarqua	5	
7	Jas. Wilson		2
8	Alenahequa, alias Ellenonqua	6	
9	Paacovparnaqua	7	
10	Arthur Armstrong		3
11	Johnny Armstrong	8	
12	Waendditiarque		4
13	Quaenoxie		5
14	Arparcarte		6
15	Quthquecrumsin, alias Jas. Halfman	9	
16	John Neconhecon	10	
17	Arhoquacanah	11	
18	Tanahneshe	12	
19	Nequatreshshe	13	
20	Sheparesh	14	
21	Papamoholland	15	
22	269 Four Miles	16	
23	Arlumquanho	17	
24	Tatlapehelayqua	18	
25	Jumper, alias Mah Taxing, alias Longbone	19	
26	Sam Longbone, alias Mahamataxing	20	
27	Arquatahtiarqua	21	
28	Tueshehing	22	
29	Loowannecumun		7
30	Mary Halfmoon		8
31	Wilson Swannock	23	
32	Dora Swannock	24	
33	Jas. Swannock	25	
34	Katy Swannock		9
35	Hittummahtearqua	26	
36	Ohlemenahoqua	27	
37	Wesonpanaqua, alias widow Wely Halfmoon	28	
38	Harris Halfmoon	29	
39	Tottoelemgonarqua	30	
40	Pattahacaho		10
41	Tahtoexing	31	
42	Tungyounmymenchio	32	
43	Weloquae, Jr., alias Wetoquahing	33	
44	Ohsonsumqooxwho	34	
45	Mooseshenahekeno	35	
46	Sarcahtiacumrin		11
47	Tunggoochqua	36	
48	Carney, alias Henry Wilson	37	
49	Asppehecund, alias Bill Swannock	38	
50	Skekenahoqua		12
51	Tolummekenoqua	39	
52	Waoalingoot	40	
53	Tilhetoxio	41	
54	Endheparkenaho	42	
55	Ahquatahtaharqua		12

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
56	Waendarnahkenaho		13
57	Katricksee	43	
58	Katricksee, child of		14
59	Chukkoquenaha, alias Qutchquoquenaho	44	
60	Shawannaquittut, alias Job Beaver or J. B. Parker		15
61	Teehee	45	
62	Ellekequenaho	46	
63	Parnahoqua	47	
64	Gohetease	48	
65	Papahyahcoowha, alias Alexander Farmhouse	49	
66	Tolacoowha	50	
67	Ahlemustahoqua, Mollie Shaw or Fish		16
68	Ahlemustahoqua, child		16
69	Wamahrquenaho	51	
70	Ahcushenaho	52	
71	Papunaleuumd	53	
72	Skequachuck	54	
73	Merumdahhese, Jas. Coon	55	
74	White Turkey	56	
75	Wawahcumshe		19
76	Toahtooxqua		18
77	Dutch Turkey		19
78	Quillanehe		20
79	Quatie		21
80	Minnehah		22
81	Ningomalahmah		23
82	Jack White	57	
83	Nancy White	58	
84	Parnaahunthequit	59	
85	Big Nigger or Big Nichol	60	
86	Quequachuck, alias Tequaschis	61	
87	Ahalummaalarquar		24
88	Narparlumund		25
89	Ahalummenahohqua	62	
90	Ohlemepahtahmihing	63	
91	Naholepahkeelarqua	64	
92	Lert Chase, alias Sarcartooquathink	65	
93	Kahnahkaalaqua	66	
94	Lungoiltaho	67	
95	Sochakanahing	68	
96	John Sarcoxie		21
97	Quaesheet	69	
98	Nansuckkennnd	70	
99	Kahcatkenahoqua	71	
100	Papechelungonarqua	72	
101	Quatusgtuh, alias Sally Williams	73	
102	Sakehecumun	74	
103	Nerkahnepahkenaho, alias Tutkatalas	75	
104	270 Elizabeth Pechalker, Sen	76	
105	Francis M. Pechalker	77	
106	Asa D. Pechalker	78	
107	Virginia Pechalker	79	
108	Mary Jane Martin		27
109	Barbara Jane Martin		28
110	Eliza Jane Martin	80	
111	Bill Halfmoon	81	
112	Julia Wise, alias Julia Bullett	82	
113	El le we nox ie	83	
114	Ske qua tut	83	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
115	Wil on Ske qua tut	84	
116	Nul li e nah o qua		29
117	Pa pa la le uund		30
118	Ko chuch que lum go nas quar	85	
119	Delaware Charley	86	
120	Ah pah mah tah ar qua		31
121	Pah che qua ete	87	
122	Pa po ma lum und	88	
123	Pa tun na numd	89	
124	Sar kar to ar qua	90	
125	Ta tah och qua e	91	
126	Oh lut whe na o qua		32
127	Len ne we so so	92	
128	Oua tun da wo ka	93	
129	Oh we la pun na cum um		33
130	Pa huck sit tund	94	
131	Pu ate he ne cum um	95	
132	Oh wo lo lun go na qua	96	
133	Ah gah ke lun go na qua	97	
134	A ha le numd, Edgar Halfmoon		34
135	Oh we che lun go na qua	98	
136	Na en nah ar qua	99	
137	Qua tise	100	
138	Ah pah nu pah ke ne ho	101	
139	Jackson Simons	102	
140	Wey me lun go nar qua	103	
141	A le uum na mah o	104	
142	Wilson Rogers, alias Ne she nah o coo wha	105	
143	Ne cah na pun a qua	106	
144	Forrest Mann, alias Leno		35
145	Ning go nu lun go nar qua		36
146	Ah qua to he cah mah o qua	107	
147	Pa ton na coo wha		37
148	Doctor Tawpese	108	
149	Oh chep pe lun pate, alias Na lah too qua	109	
150	Och qua che		38
151	Len ne watch ty, Harry Arnold		39
152	La nah pi	110	
153	Axh qua, alias Iax qua	111	
154	Jim Snake	112	
155	Mah wet tace		40
156	E lah	113	
157	Alexander Connor		41
158	Elizabeth Thomas	114	
159	Lucy Connor, Mrs. Snake		42
160	Alexander Journeycake	115	
161	Maria Partridge		43
162	David Thomas		43
163	George Moonshine		44
164	Nancy Cook	116	
165	William Long	117	
166	Katy Cetchum Long	118	
167	Nancy Long		45
168	James Irvin Long		46
169	John Kenney		47
170	Eliza Kinney		48
171	Billy Paschal	119	
172	Wa lus lah oh qua	120	
173	Wa lu dah que nah o, alias Na un dah que naho	121	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
174	Kat kah pun nar qua	122	
175	Pa mah tah oh qua, alias Betsy Jackson	123	
176	Polly Secondine	124	
177	Louisa Secondine		48
178	Ta lah whe nund	125	
179	Big Beaver		49
180	Lon pa na cund	126	
181	Te ki a pah ke cum un	127	
182	A le pah ke non, alias El le pah ke nah o	128	
183	Te ki ete parme scot	129	
184	David B. Ketchum	130	
185	Mary Whitewing	131	
186	Old Horse	132	
187	271 Ning go mo qua e	133	
188	Ning go mo qua e	134	
189	Paw ha too wha	135	
190	O no qua tah pem a cum un	136	
191	Little Jonas, alias Pa shoo wha	137	
192	Tuh loo qua	138	
193	Ning go me numd, Geo. Washing		50
194	Que lup pe na ach qua	140	
195	Os kas que non o qua	141	
196	Tus see nee	142	
197	George Wilson		51
198	Wil le nah		52
199	Wilson Sarcoxie, Jr	143	
200	Par ke nar o	144	
201	Asp pe pa ke now o	145	
202	John T. Smith	146	
203	Sallie O. Smith		52
204	Thos. O. Smith	147	
205	Wm. O. Smith		53
206	Eu lah lie Smith	148	
207	Emma Journeycake	149	
208	Samuel Love, alias Samuel Bufflo		54
209	Wah ho ney	150	
210	Ah pah me mah o	151	
211	Hah poo wha	152	
212	Ah qua to ar qua	153	
213	Pa tah to ace	154	
214	Duck qua e, alias Too qua e	155	
215	Qua chuck, alias Qua chuck	156	
216	Pome hic cum um	157	
217	Wos ke pah coo wha	158	
218	Pa mah le mah	159	
219	Kus ke ke hic cum un John Young		55
220	Kee ke she lay qua	160	
221	Jewsharp Lieut	161	
222	Wa ha pu pan coo whe	162	
223	Ah pah ma le nah o qua	163	
224	Ning go mah prin na qua		56
225	Qua chush tut		56
226	Pa pa ma too numd	164	
227	Such ke hing	165	
228	Nancy Secondine	166	
229	Matilda Secondine	166	
230	Hon ho ar cum she, alias An coo ar cum she	167	
231	Che ton e cum un	168	
232	Kos ke coo wha	169	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
233	Che we she	170	
234	Pa che he la qua	171	
235	She wan na coox qua (F. M.)	172	
236	To hun doox wha, alias Young Wilson	173	
237	Ne lah che pah Ke nah o		57
238	Tate cah e pal coo wah, alias Big John	174	
239	Ah quail pun dah kah o qua	175	
240	Sa ke lun go maxing	176	
241	Mary Longbone	177	
242	Wind, alias Charfer John Wind		58
243	John Journeycake	178	
244	Sally Journeycake	179	
245	Sally Raccoon	180	
246	Betsy Hill	181	
247	Virginia Hill		59
248	She wau na coo qua (M. C.)	182	
249	Ferry Boy	183	
250	Pah yac sit tah oh qua	182	
251	Ah qua tah pun nah qua	183	
252	General Jackson	184	
253	Wa num ny mah o	185	
254	Pup pah me numd	186	
255	Na kees kund	187	
256	Kalum me lun fo nar qua	188	
257	Koot kah pah noo wha		60
258	Oheve ah ah me numd	189	
259	Ka ki ets, alias Kar cas cate	190	
260	Colonel Jackson		61
261	Sa ki qua hing	191	
262	Betsy Shawnee	192	
263	John Shawnee	193	
264	John White	194	
265	Susan Shawnee	195	
266	Pa mah pun John Bill		62
267	George Swannock		63
268	Tul li te ar qua	196	
269	Ning go mah pun ar qua		64
270	272 El le mah ho qua	197	
271	Kee sah tah axh qua, alias Polly Ketchum	198	
272	Ah lah lu qua	199	
273	Gua	200	
274	Ah mick ah nuse	201	
275	Un da lum mah	202	
276	Wal we la lum nud	203	
277	Mary Ketchum	204	
278	Dick Brown	205	
279	Pupo tuck ke no	206	
280	Two Toes	207	
281	Sa car lu lah	208	
282	Jane Brown	209	
283	John Q. Connor, alias Mitchell Carleton		65
284	Julia A. Beaver, alias Virginia W. McGullough	210	
285	George Mitchell Connor		66
286	Sax se, alias Lucy Jane c		67
287	Sally Moonshine		68
288	Big Shawnee	211	
289	Julia Ann Williams	212	
290	Ester Ann Brown	213	
291	Kee way che	214	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
292	To la ma te oh qua	215	
293	We che pah kee xing, alias William Sarcoxie	216	
294	Wah na we nah o qua	217	
295	O we la le mah	218	
296	Tus pah lah too	219	
297	Capt. Moonshine	220	
298	Pa che pah ke can	221	
299	Leonard Suake	222	
300	Pa lup po Snake	223	
301	Sampson Snake	224	
302	Let teese	225	
303	Ton gon qua	226	
304	S Lettuse	227	
305	George Williams	228	
306	Wis ke lum go	229	
307	Tup pe he cum un	230	
308	To hum dah nah coo wha	231	
309	Ne con ar te ar qua, alias Qua chuck		69
310	Lucinda Marshal	232	
311	Ah sax coo wha	233	
312	El le me rial o qua, alias Ephraim Everett	234	
313	Po har ko wha, alias Calvin Evaette		70
314	Ka la lum no, alias Fremont Everett	235	
315	Nah le nah o qua	336	
316	George Connor	237	
317	Malinda Connor	238	
318	Susanna Connor		71
319	John A. Connor	239	
320	Jane Connor		72
321	Mary Gillis Rogers		73
322	Sophronia Rogers	240	
323	Ah quail par lu	241	
324	Que lup pe pah ke la que	242	
325	Widow Newcomb	243	
326	Zack Newcomb	244	
327	John Taylor Newcomb, left the Cherokee nation, and his whereabouts are unknown		
328	Cyrus Newcomb	245	
329	O che e show	246	
330	Wa le que na xing, alias Robert Wilson	247	
331	Tot e ki e pah ke nah o	248	
332	Ta le nah e qua	249	
333	Tot ki e now o qua	250	
334	Kun Zier, alias Qua sha que cum un at Anadarko, I. T.	251	
335	Oh quan chis, alias Sallie Hill	252	
336	John Moses	253	
337	Qua tun da, Mrs. Chas. Bennett		74
338	Wm. Shaler		75
339	Mary Bezion	254	
340	Stephen Bezion		76
341	Gua	255	
342	James Ketchum	256	
343	Elizabeth Connor Ketchum		77
344	Hester Ann Ketchum		78
345	Virginia A. Ketchum	257	
346	Thomas S. Ketchum		79
347	Amanda Ketchum		80
348	Cassandra Ketchum	258	
349	Jas. Ketchum, Jr.		81

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
350	Silas Hamilton Connor Ketchum		82
351	Amelia Fairfield Ketchum	259	
352	Big Field	260	
353	273 Ar cus sha pun nah qua	261	
354	Pa che lun go na xing	262	
355	O we ar e numd	263	
356	Wey looholland		83
357	Chuck que lun go na qua	264	
358	John Swannock		84
359	Par ke now	265	
360	Swannock (child)	266	
361	John Wolf	267	
362	Laura Bullit	268	
363	Lizzie Wilson Bullit	269	
364	John Love, alias Buffalo	270	
365	Thomas D. Anderson		85
366	James Anderson	271	
367	Mary Ann Willman	272	
368	Pu ate pah coo wha	273	
369	Mixech lay che	274	
370	Nancy Wild Cat	275	
371	Lucy Wild Cat	276	
372	Che tun nah pun na qua	277	
373	Sa con nah ne cund	278	
374	Ocxh un nah kee nah o	279	
375	Lucinda Connor Collins		86
376	Frenchman		87
377	Nig go pah ke cah o	280	
378	Len ne we nund		88
379	Ning go mah ta a qua	281	
380	Nancy Miller		89
381	Silus Miller		90
382	Susan Lewis	282	
383	Que she qua he	283	
384	Martha Jacobs	284	
385	Oh lum me cum un	285	
386	Pah cun da lum ah	286	
387	Yame qooh qua	287	
388	Oh we la pun nah qua		91
389	La la e bund	288	
390	George Lucason	289	
391	Oh lu now oh qua	290	
392	Nun go now oh qua	291	
393	Wah e nah o		92
394	Loo na we cum un	292	
395	Toteki oh who (alias John Paschael)		93
396	James Connor	293	
	Mrs. James Connor		
397	Qua ta too, alias Yua la wut		94
398	Willie Connor, Willie McEnin		95
399	William Marshal Connor (Washer)		96
400	Rosanna Marshal		97
401	John Marshal		98
402	Polly Marshal		99
403	Charles H. Armstrong		100
404	Mary E. Armstrong		101
405	Maria L. Armstrong	294	
406	Caroline Armstrong		102
407	Lillie Ann Armstrong		103

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
408	Katy Alice Armstrong		104
409	Mary Armstrong	295	
410	Ah pah mah lum mah		105
411	Ah pah me to na qua, alias She co lis	296	
412	Suck ke lun gon	297	
113	Pah mah le qua		106
414	Isaac Journeycake, Sr	298	
415	Nancy Journeycake	299	
416	Mary Journeycake, Mrs. Dr. Allen		107
417	Angeline Journeycake	300	
418	Joseph Journeycake		108
419	Isaac Journeycake, Jr		109
420	Rua we shon	301	
421	Tee tuck ty	302	
422	Che lu les	303	
423	Mo she he crim un	304	
424	Ah sah kah le cum un	305	
425	Jas. Wolf	306	
426	Rachel Wolf		110
427	Henry Wolf		111
428	Elizabeth Wolf, alias Jane W		
429	Mah tah tu ace		
430	Pa te he car mon	307	
431	Jacob Dick	308	
432	Polly Dick	309	
433	Louisa Dick		112
434	She she	310	
435	274 Ah quail pe tan	311	
436	La ti pa kee nah o	312	
437	Tol loo wha, John Yellow Jacket		113
438	Nat tah lum und	313	
439	John Williams	314	
440	Elizabeth Rains	315	
441	Mary Rains	316	
442	Julia Noah Rains		114
443	Joseph Armstrong	317	
444	Nancy Armstrong	318	
445	Penanders Armstrong	319	
446	Sophia Armstrong		115
447	Emma Armstrong	320	
448	Thompson Smith		116
449	Kar pace non	321	
450	Nah lah e lun go na qua	322	
451	Ning go ma le nuned	323	
452	Child not named		
453	End har toar qua	323	
454	Kar face qua		117
455	Qua tut	324	
456	Nancy George	325	
457	Sarah Ann Cokely	326	
458	Josephine, alias Betsey Sykes		118
459	Nancy Russel	327	
460	Tol le ear pi, Leute John Stout		119
461	Koot te hese, alias Jacob Easy	328	
462	Qua she she		120
463	Pa too holland	329	
464	Oh we le nar qua	330	
465	Hannah Sykes		121
466	Eda Sykes		121

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
467	Pa tal e case	331	
468	A quail pe nah o		122
469	Chuck pe he mah o, alias Auch pake nah o	332	
470	Daniel Anderson		123
471	Eliza Bullit	333	
472	Geo. Bullit, Jr		124
473	Eliza Bullit, Lizzie Coker		125
474	Nelson I. Tanner		126
475	Rachel A. Tanner		127
476	Charles V. Tanner		228
477	Ada B. Tanner	334	
478	Lavinia Tanner		228
479	Josiah Berryman	335	
480	Tung qua chuch		229
481	John Secundine		230
482	Lah lush	336	
483	Took cah cum shy	337	
484	Qua chuch	338	
485	E qua wa tise	339	
486	Wind set tund	340	
487	Wind da a lay qua		231
488	O we yah whe cund	341	
489	Loo ahe ca oh qua	342	
490	To lun mah pun a cum un		132
491	Wey un dah nah coo wha		133
492	Big Birds	343	
493	R. H. Leach	344	
494	Betsey Longbone	345	
495	Cor cy la lum un	346	
496	Doe Sticks, alias Ning go me tixie	347	
497	To ki o holland	348	
498	Po mar to ar qua, alias Partit Longbone	349	
499	Little Buffalo	350	
500	Caroline Buffalo		134
501	Simon Buffalo, Love		135
502	Susan Buffalo, Norwood		136
503	Melinda Buffalo	351	
504	Mary Buffalo	352	
505	Mary Newcomb		137
506	Hamelton Newcomb, Tom Newcomb		138
507	Joseph Newcomb	353	
508	Henry Newcomb	354	
509	Lincoln Buffalo		139
510	Wilson Love	355	
511	Margaret Snake		140
512	Sam Lucas, alias Sam Locust	356	
513	Koot to lun go nar qua	357	
514	John Lucas, alias Locust	358	
515	Franklin Lucas, alias Locust		141
516	Qua chuch, alias Little Girl	358	
517	Na mee non	359	
518	275 Now no no bua e	360	
519	Jane Ketckum		142
520	Joshua Wilson		143
521	Ah pah che lay qua		144
522	Jim Brown	361	
523	John Brown		145
524	Pa pa ta no ke no	362	
525	Na no la le mund	363	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
526	Mary Ann Fish		146
527	Wamepah ke nah o, alias Loosey	364	
528	Par mo ha Longbone	365	
529	John Noah	366	
530	Ah ha le mah que nah o	367	
531	Oh que o lay qua	368	
532	Pa mah cum she	369	
533	Susan Pa mah cum she	370	
534	Oh wel lun noox qua		147
535	Pa tah to ha lay qua	371	
536	Susan		
537	Abram Haff	372	
538	Tuck kee lun go nah qua	373	
539	Mam ka noo wha	374	
540	Es pe lun go nar qua	375	
541	Qutch que cum un		148
542	Pame he cund	376	
543	Ka non che lun gon	377	
544	Qual lo sho, Mary	378	
545	Che ton ne car pi, alias Big Stout		149
546	John Thomas	379	
547	Ne con he car pi, alias Little Bullit	380	
548	Al lum ni mah koox qua		150
549	Emd har ti tah a qua	381	
550	Ah ha le mund		151
551	Wm Alltime	382	
552	Jane Shawnee		152
553	Ne co to way she	383	
554	Ko tah ti an	384	
555	Wee tah coo wha	385	
556	Mary Bullit, Mary Halleck		153
557	Pa ma lum mah	386	
558	Wun dah que non	387	
559	Geo McCullough	388	
560	John File	388	
561	Edward Wilson	389	
562	Ning go me Peter, John Peterson		156
563	Hilas Peter	390	
564	Quafte	391	
565	We che pame she	392	
566	Qua, alias Big Woman	393	
567	Nah nah che nund, John McCadting		155
568	A le mah ti ar qua		156
569	Gustavus Davis, alias Wa le car pi	394	
570	Nancy A. Ketchum	395	
571	Elizabeth Ketchum	396	
572	Mary Jane Ketchum		157
573	Melinda Ketchum	397	
574	Julia A. Ketchum	398	
575	Olive Ann Ketchum	399	
576	Thomas C. Ketchum		157
577	Nancy S. Ketchum	400	
578	John Watson Ketchum		158
579	Ah sah kah pun nar qua	401	
580	Jim Shaw		159
581	Qua wee sa	402	
582	Serc see	403	
583	Pah o le nah o		160
584	Pa che pah ke la qua		161

THE CHEROKEE NATION.

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
585	William Worrell	404	
586	Matilda Worrell	405	
587	Ben Holland	406	
588	Cha ni non	407	
589	Julia George Sen	408	
590	John George	409	
591	John Thomas, M. C	410	
592	Pah mun ne koox wha, alias Big Buffalo	411	
593	Nei nah heese	412	
594	Wa ne lin go na hing	413	
595	Mary Wright, alias Ke ki she na ki no	414	
596	Ben Wright	415	
597	Sophia Gillis	416	
598	Widow Necon hecon, alias Che le har qua	417	
599	James Wilson, M. C		162
600	Wis ke par ke nah		163
601	276 Mary Secondine		164
602	Solomon Armstrong		165
603	Flat Foot	418	
604	My a to use	419	
605	Wey le o goox mund	420	
606	We toque	421	
607	Ning go mah toce	422	
608	Ning go mah que no	423	
609	Clara Wilson	424	
610	Ke ke she no	425	
611	A ha le mund	426	
612	Ning go mun ox koo qua	427	
613	Eliza Edgar	428	
614	Wame sut to oh qua, alias We le chane na okqua	429	
615	E lah tut, alias Wa me lin go na hing	430	
616	Sally Drew, alias El lar ti ar qua	431	
617	Gate Post, alias Sa lu loo ke lund	432	
618	I a la qua	433	
619	Qutch que par coo wha	434	
620	Sally Day, alias Sally Connor	435	
621	Suze Miller		166
622	Mary A. Wilson Day		167
623	James Day	436	
624	Lillie Ann Day		168
625	Lul le e car qy Day		196
626	Andrew M. Wilson Day		160
627	Nancy, alias Mary Anson		171
628	Na poo wha		172
629	Me mum dy, alias Ah qua chois tut Snake	437	
630	Ah mung gu nah o	438	
631	Tundia	439	
632	Ning un oh kee no	440	
633	Moo se ha cund, Elkhair		173
634	Co cul lup poo wha, Chas. Elkhair		174
635	Wa me pah ka nah o	441	
636	Pa tol le mah, alias Pa tol le nah o		175
637	Martha Edger	442	
638	Rebecca Lucas	443	
639	Tul lah tah a la qua	444	
640	Joe Partridge	445	
641	Jane McCollough	446	
642	John Willie McCollough		176
643	Hilas Wilson McCollough	447	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
644	Carrie Wilson McCollough	448	
645	Anderson McCollough, alias Jac McCarty		187
646	Thos. Lee McCollough	449	
647	Lizzie McCollough	450	
648	Wis ke par ke nah o	451	
649	John Wilson McCollough	452	
650	Len no we shy	453	
651	Til lah que nah o	454	
652	Par tar que non	455	
653	Tace co me cum un, alias Little John Sarcoxie, Jr.		178
654	Elizabeth Andrew		179
655	Pa tun na mah o	456	
656	We ta a la qua	457	
657	Lillie	460	
658	Wa me pah ku nah o	461	
659	Aah pah mo nah o	462	
660	Nancy C. Smith	463	
661	Wa la le mah, alias Eliza Wilson	464	
662	George Washington		180
663	Nancy Washington	465	
664	Qua tun dut	466	
665	William Washington	467	
666	Charles Washington	468	
667	Mary Washington	469	
668	Francis Washington		181
669	Julia Washington		182
670	John Washington		183
671	Albert Washington		184
672	Edson Washington		185
673	Ryland Washington		186
674	Sarah Washington		187
675	Cyrus Washington		188
676	James Washington		189
677	Me num dah, alias Sar con oh kee non	470	
678	Os par lae nah		190
679	Soldier		191
680	Wes ke lee tah		192
681	Simon Ketchum	471	
682	Best Quality	472	
683	Pa tar le nah o	473	
684	277 Fillmore Secondine		173
685	Rachael Secondine	474	
686	Wilson Secondine	475	
687	Qua ten dit		174
688	Sam Longbone, Sr., alias Jumper Andy Mahtaxing	476	
689	Tus cus que car pi	477	
690	A qua te a lay qua	478	
691	Young Martin	479	
692	Chuck ko pim ar qua	478	
693	Nicholas Hill	479	
694	Til le pah coo wha, John Caps		175
695	Ah sah ke pah ke nah o	480	
696	John Kinney		176
697	Curley Head		177
698	Ka non che non		178
699	Julia Ann Curleyhead	481	
700	Ske har qua		169
701	Lottie Curleyhead	482	
702	Koo to par cus	483	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
703	Dawson Curleyhead, Albert	484	
704	Tal le qua		180
705	La la we non	485	
706	Muck kee nah tah ace	486	
707	Moosh ha que mund	487	
708	Ke she pah ke nah e	488	
709	Oh we le lun go nar qua		181
710	Ke kast koo wha		182
711	Wa mah pe tah o	489	
712	Pa che ka took wha	490	
713	Jacob Park	491	
714	Car pace qua, alias Nu par ke mah o	492	
715	Pa me lun go na hing	493	
716	Ah le nah o qua	494	
717	Pup pa me numd	495	
718	Ning go me hing	496	
719	Te lah pah na qua	497	
720	Sa ke lun go na qua	498	
721	Ar sun cape hund	499	
722	Wis ke par ku non	500	
723	To lum cok xo lund	501	
724	Chee lunze	502	
725	Captain Anderson Sarcoxie	503	
726	Wa me na oxh pua	504	
727	Moosh he cum un	505	
728	Jacob Eueas	506	
729	Ar sah kee na o	507	
730	Ah pah me nah o	508	
731	Melinda Bascomb		183
732	Amanda Bascomb		184
733	Henry Bascomb, Jr		185
734	Mary Yellow Jacket	509	
735	Nah kee nah o qua	510	
736	Muate he non	511	
737	Yellow Jacket Child u e		186
738	B. S. Journeycake, alias Mayeses	512	
739	Yellow Leaf, alias We sah e pah ke cum un	513	
740	Lemuel P. Ketchum		187
741	Ale pah ke nah o	514	
742	Pa me le mah, alias Nuch pa le mah	515	
743	Jonas Ketchum	516	
744	John Redman	517	
745	Tenn dook wah, alias Ya lame cans and mule	518	
746	Ne lah tah que nah o, alias Sally Simons	519	
747	E yar tup, alias Tom Wilson		188
748	Solomon Love, alias Solomon Buffalo		189
749	Jim Simons	520	
750	Tun da la qua e	521	
751	Al la ma ah la qua		190
752	Ween dah coo pah na cum un	522	
753	Le san it	523	
754	Ta a lete	524	
755	Mack a lete	525	
756	Louisa Simons		191
757	Oh lu non	536	
758	To noose white	527	
759	Christopher Snake	528	
760	Kee shaw le quah	529	
761	Ma cum chis	530	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
762	Joseph Griffy	531	
763	Pal me la oh qua, alias Hattie	532	
764	So ku par kee cum un	533	
765	Elias Griffy	534	
766	Jim White	535	
767	278 Os kas ke par kee no	536	
768	Oh le non	537	
769	Tot ka e nah o qua		192
770	Moc ca sin	538	
771	Wa lun dah kah o qua	539	
772	Po me non	540	
773	Ween dox quaise	541	
774	Quotch quo ti as qua		193
775	Mem da lah	542	
776	Now to pa loo wha	543	
777	Noon da whe cum un	544	
778	Tel le car pi	545	
779	Thomas Secondine		194
780	Jane Secondine		195
781	Annie Secondine		199
782	Wa lah to aze	546	
783	Pa pa tooxo hund, alias John Delaware	547	
784	Wa sah e pacoo wha	548	
785	Jim Bob	549	
786	A ha la ma le mah o	550	
787	Ta ha le nah o quah	551	
788	R. J. E. Journeycake	552	
789	Rachael Journeycake	553	
790	Narcissa Journeycake	554	
791	John Bullit, Sr	555	
792	Nancy Louisa Bullit	556	
793	Qua char ti ar qua	557	
794	John Hill		197
795	Doctor Block	558	
796	Eliza Block		198
797	Oh ne la le mah	559	
798	We sah a te arqua	560	
799	Qua lup pah pun na qua	561	
800	Susan Beaver, alias Mem da la qua	562	
801	Nancy Ketchum, alias Cabbage qua	563	
802	Wild Cat	564	
803	Al le mah pah ke nah o	565	
804	William Riley Ketchum	566	
805	Lucy Ketchum	567	
806	Nancy Ketchum	568	
807	Joel Ketchum	569	
808	Caroline Ketchum	570	
809	Absolom Ketchum	571	
810	Henry Clay Ketchum	572	
811	George Ketchum	573	
812	Louisa Beever ox Love	574	
813	Mary Jane Beaver Oh how da pe to	575	
814	Virginia Beaver, alias Ne can se pat kee no	576	
815	Ne sha pun a qua		198
816	Wa we la lum und, alias John Rogers	577	
817	Captain Fall Leaf	578	
818	Katy Fall Leaf	579	
819	Sa kah lux qua		199
820	Pa tale cum un George Falleaf		200

Plaintiffs' Exhibit M—Delawares—Continued.

No.		Name.	Dead.	Living.
821		An no ho co pun a qua, alias Lucy Fall Leaf		201
822		Oh tak ace	580	
823		Wol lup pa coo	581	
824		Anna hie cund	582	
825		Wa la pah ke hing	583	
826		Pe a tah pe a she	584	
827		Moo sha ta wan na cum she	585	
828		Moo sow a wan a pea she	586	
829		Wey sah ah hah pus kah kah	587	
830		Su Bier, alias Ceaser		202
831		Wey sha a wan a cumshe	588	
832		Pah cat pea she		202
833		Butcher	589	
834		Pah mah cum she	590	
835		Mah co tah wah pea she	591	
836		Wey she pah pe a she kah	592	
837		Ne lah che non	593	
838		Ke she lem go nah qua		203
839		Calk che que now o		204
840		Jo lus (Julius)		205
841		Ah pah nu non oh qua	594	
842		Qoa ten dut		206
843		Swan muck, alias Shang-hai	595	
844		Joseph Thompson	596	
845		Quah tal le hase	597	
846		Fep pam nook koo	598	
847		Wa lahtah ace		207
848		We sah e pah ke nah o		208
849		Sha wan na koox wha	598	
850	279	Pa mah pun nox qua	599	
851		Lem ba lease	500	
852		Ning go pun ar qua	601	
853		Pa nah tah a cum un	602	
854		So ca a lah too		209
855		We tah a lah too		210
856		Ice Wilson		211
857		Ne she nah tease	603	
858		We le pah ke nah o, alias French Wilson, widow	604	
859		Wa le pah ke kund	605	
860		Pa kae tah pea she	606	
861		Pa ke ton e xing	607	
862		Wa me neah	608	
863		Os par to ar qua	609	
864		Shop pa a se	610	
865		Ah pah me pah ke nah o		212
866		Pa par me se	611	
867		Puck qua	612	
868		Che lun deep	613	
869		Robert Lundy		213
870		Louisa Lundy		214
871		Mary R. Lundy	614	
872		Rosa E. Lundy		215
873		Edward E. Lundy		216
874		Henry Armstrong		217
875		Lucy Jane Armstrong	615	
876		Albert Armstrong		218
877		Jacob Linneas, alias Wa ma a lah too	616	
878		Samuel Moses		219
879		George F. Moses		220

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
880	Henry W. Moses		221
881	Na cooch che	617	
882	Ske kat lay qua	618	
883	Cha tak wa pea	619	
884	Thomas Walker		222
885	Ke lah wa sah	620	
886	Wen thow be ah she Kah	621	
887	Bull	622	
888	Na o pou hol lund	623	
889	Tah o wha	624	
890	She wan na koox qua	625	
891	Os kos ke leen go nor a qua	626	
892	Eliza Cat	627	
893	Andrew Miller		223
894	Sally Hill Secondine	628	
895	Jacob Miller, alias Jacob Secondine	629	
896	Samuel Miller, alias Simon Secondine	224	
897	Katy Miller, alias Katy Secondine		225
898	Stephen Miller		226
899	Lucinda Miller		227
900	Capt. John Connor	630	
901	Char Lottie Connor	631	
902	John Bullit, Jr.		228
903	Black Beaver	632	
904	Josiah Anson	633	
905	James Harrison	634	
906	Ah pah ma le mah		229
907	Henry Harrison		230
908	Harrison Child	635	
909	Eliza Ketchum	636	
910	Nat o ti ar qua	637	
911	Qua ta che hease	638	
912	Arch na nah qu nah o	639	
913	George Cummings	640	
914	Po le toone	641	
915	Tun dah too leen, alias Ten dah loo quae	642	
916	Wa un dah pun arqua	643	
917	Qua na lease	643	
918	Wa ne lun go nar qua	644	
919	Wa wil le tox ie	645	
920	Oh ho le me numd	646	
921	We tah pun ah qua	647	
922	Wen da a la qua		231
923	Koot te kar pah e, alias Billy Wilson		232
924	Qua ete	647	
925	Charles Journeycake		233
926	Jane Soeia Journeycake		234
927	Emeline Jonneycake		235
928	Adeline E. Jonneycake		236
929	Annie E. Journeycake		237
930	Cora Lee Journeycake		238
931	Doctor Houston, alias Doctor Bascomb	648	
932	Abraham Ketchum		239
933	280 Charles Ketchum	649	
934	Ewing, Crompston	650	
935	Sarah Bullit		240
936	William Bullit	651	
937	Amanda Bullit	652	
938	Simon Bullit	653	

Plaintiffs' Exhibit M—Delawares—Continued.

No.	Name.	Dead.	Living.
939	Henry Tiblow	654	
940	Thomas Everett	655	
941	Jane Haff, alias Jane Carleton	657	
942	Elizabeth Carleton		241
943	Mary Haff	658	
944	Cyrus Haff		242
945	Joseph Haff		243
946	Sarah Haff		243
947	Hiram Haff		274
948	William Haff		245
949	Eliza Randall	659	
950	Elvira Hendricks	660	
951	Mary Randall		246
952	Frank Randall		247
953	Munson Randall	661	
954	James Randall		248
955	Eliza Hendricks	662	
956	Harrison Love	663	
957	Martin Beaver	664	
958	Mary Ann Beaver, alias Mary Jefferson	665	
959	Pa too ka qua, alias Ne he lah che pah ke nah o	666	
960	Pa pe me too holland, alias Ah lung or star		248
961	Eliza Jane Fish		249
962	Betsy Marshal	667	
963	Sarah Ann Rawlins	668	
964	Alice Rankins	669	
965	Sally Rankins		250
966	Verily Prudence Rankins		251
967	Henry Zeigler		252
968	Solomon Everett	669	
969	Harriet Moses	670	
970	Mary Stiggers	670	
971	William Adams		253
972	Kate Adams Wifes	671	
973	Rachel O. Adams (Richard C. Adams)		254
974	Horace M. Adams		255
975	Washington Hendricks	672	
976	Israel P. Haff	673	
977	Carrie Haff	674	
978	Edward S. Menager White Turkey		256
979	Eugenia Noah	675	
980	Tot ki e now ah qua	676	
981	Julius Armstrong	677	
982	Florence Worrell		257
983	John D. Marker	678	
984	Tom Hill	679	
985	Al le nah tah o qua, alias Alar to ur qua	680	

280½–284 PLAINTIFFS' EXHIBIT N.

This exhibit is a register of the names of members of the Shawnee tribe of Indians who have moved to and located in the Cherokee nation, Indian Territory (prior to the 10th day of June, 1871) within two years from the 9th day of June, 1869, in accordance with an agreement entered into by and between the Shawnee tribe of Indians and the Cherokee nation of Indians, through their delegations in Washington city, D. C., United States of America, on the 7th day of June, 1869, and approved by the President of the United States on the 9th day of June, 1869, in accordance with the XV article of the Cherokee treaty with the United States, proclaimed August the 11th, 1866. This the 9th day of June, A. D. 1871.

Upon this exhibit is shown the names of each of said Shawnees, who in all are 772 in number.

This exhibit is on file in full in the Court of Claims, but, by consent, is not printed here in full.

285 OFFICE OF THE EXECUTIVE DEPARTMENT,
CHEROKEE NATION, IND. TERR.,
TAHLEQUAH, *Aug.* 14, 1871.

This is to certify that the foregoing is the original "copy of the register of names of the members of the Shawnee tribe of Indians who have moved to and located in the Cherokee nation" in accordance with an agreement made and entered into by and between the said Shawnee tribe of Indians and the Cherokee nation of Indians through their delegates, on the 7th of June, 1869; and that a true copy of the same has been taken and retained in this office; and that on the 4th of August the ratification of the agreement herein mentioned was proclaimed; and that the Shawnees registered have been declared to be Cherokee citizens, it being understood that the ratification is admitted by the United States Government, that there is no bar to the final settlement of the agreement on the part of the United States officials, after the correction of an error in regard to the insertion of names of the delegates making the agreement. There are registered 772 persons, instead of 770, as shown on the original by figures.

In testimony of which I have hereunto set my hand and the seal of the Cherokee nation on this the 14th day of August, A. D. 1871.

(Signed) LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

We, the late chiefs of the late Shawnee tribe of Indians, hereby certify that this is a true copy of the register of the names of the members of the Shawnee tribe of Indians who have moved into and located in the Cherokee reserve, Indian Territory, in accordance with an agreement made and entered into by and between

said Shawnee tribe of Indians and the Cherokee nation of
286 Indians, through their delegations, June the 7th, 1869, and approved by the President June the 9th, 1869.

This the 3d day of August, 1871.

(Signed) GRAHAM ROGERS,
Late Prin. Chief of the Shawnee Tribe of Indians.
CHARLES TUCKER,
Late Ass't Prin. Chief of the Shawnee Tribe of Indians.

This is to certify that the foregoing is a true copy of the original sent to the Hon. Secretary of the Interior, diligently compared, and in all things the same except in the figures, there being 772 names on the original but marked only 770.

Copied and certified to by order of the principal chief:

(Signed) W. L. G. MILLER,
Private Sec. to the Principal Chief.

Tahlequah, C. N., Aug. 13th, 1871.

PLAINTIFFS' EXHIBIT O, MARCH 29, 1899.

An act in relation to persons who have been admitted to citizenship by special acts, etc.

Be it enacted by the national council, That all those persons who have, by special act or otherwise, been readmitted to the rights and privileges of Cherokee citizenship, and who shall fail to return to the nation within six months from the date thereof and thereafter identify themselves with the people of the Cherokee nation by locating permanently, shall be barred such right of citizenship, all provisions to the contrary notwithstanding.

Be it further enacted, That the principal chief cause this act to be published in the *Cherokee Advocate* for six months from date of passage, for the information of those concerned.

Approved, November 28th, 1873.

WILL. P. ROSS.

COMPLAINANTS' EXHIBIT O 1.

Resolution Authorizing the Appointment of Commissioners to Treat with the Delawares.

Resolved by the national council, That the principal chief, assistant principal chief, and three others be appointed by the principal chief as commissioners to [enter] into an agreement with the Delaware delegation in reference to allowing the Delawares to select a reser-

vation from our lands lying east or west of 96° of longitude, according to the provisions of the treaty of July 10th, 1866.

Tahlequah, C. N., November 7, 1866.

JAMES VANN,
President National Committee.
H. D. REESE, *Clerk.*

Concurred.

JOHN YOUNG,
Speaker Council.
R. B. ROSS,
Clerk Council.

Approved.

WM. P. ROSS.

287 *Articles of agreement made this 8th day of April, A. D.* 1867, *between the Cherokee nation, represented by William P. Ross, principal chief; Riley Keys and Jesse Bushyhead, delegates, duly authorized, parties of the first part, and the Delaware tribe of Indians, represented by John Connor, principal chief; Charles Journey Cake, assistant chief; Isaac Journey Cake and John Sarcoxie, delegates for and on behalf of said Delaware tribe, duly authorized, witnesseth:*

Whereas, by the 15th article of a certain treaty between the United States and the Cherokee nation, ratified August 11, 1866, certain terms were provided under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of 96° of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee nation, subject to the approval of the President of the United States; *and whereas*, by a treaty between the United States and the Delaware tribe of Indians, ratified August 10th, 1866, the removal of the said Delawares to the Indian country south of Kansas was provided for, and in the 4th article whereof an agreement was made by the United States to sell to the Delawares a tract of land, being part of a tract the cession of which by the Cherokees to the United States was then contemplated; *and whereas* no such cession of land was made by the Cherokees to the United States, but in lieu thereof terms were provided, as hereinbefore mentioned, under which friendly Indians might be settled upon their lands; *and whereas* a full and free conference has been held between the representatives of the Cherokees and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands and their consolidation with said Cherokee nation: *Now, therefore*, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

The Cherokees, parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions, hereinafter mentioned, agree to sell to the Delawares, for their occupancy, a quantity of land east of the line of the 96° west longitude, in the aggregate equal to 160 acres of land for each individual of the

Delaware tribe who has been enrolled upon a certain register made February 18th, 1867, by the Delaware agent, and on file in the Office of Indian Affairs, being the list of the Delawares who elect to remove to the "Indian country," to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto; and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line of 96° not already selected and in possession of other parties; and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements according to the legal subdivisions, when surveys are made (that is to say, 160 acres for each individual), shall be guarantied to each Delaware incorporated by these articles into the Cherokee nation; nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee nation
288 imposed upon the native citizens thereof: *Provided*, That nothing herein shall confer the right to alienate, convey, or dispose of any such lands, except in accordance with the constitution and laws of said Cherokee nation.

And the said Delawares, parties of the second part, agree that there shall be paid to the said Cherokees, from the Delaware funds now held or hereafter received by the United States, a sum of money equal to one dollar per acre for the whole amount of 160 acres of land for every individual Delaware who has already been registered upon the aforesaid list, made February 18th, 1867, with the additions thereto heretofore provided for. And the Secretary of the Interior is authorized and requested to sell any United States stocks belonging to the Delawares to procure funds necessary to pay for said lands; but in case he shall not feel authorized, under existing treaties, to sell such bonds belonging to the Delawares, it is agreed that he may transfer such U. S. bonds to the Cherokee nation at their market value at the date of such transfer. And the said Delawares further agree that there shall be paid from their funds, now or hereafter to come into possession of the United States, a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned, and removing to the Indian country, sustains to the whole number of Cherokees residing in the Cherokee nation; and for the purpose of ascertaining such relative numbers the registers of the Delawares herein referred to, with such additions as may be made within one month from the signing of this agreement, shall be the basis of calculation as to the Delawares, and an accurate census of the Cherokees residing in the Cherokee nation shall be taken under the laws of that nation within four months, and properly certified copies thereof filed in the Office of Indian Affairs,

which shall be the basis of calculation as to the Cherokees. And that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is $678,000. And the Delawares further agree that in calculating the total amount of said national fund there shall be added to the said $678,000 the sum of $1,000,000, being the estimated value of the Cherokee neutral lands in Kansas, thus making the whole Cherokee national fund $1,678,000; and this last mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund: *Provided*, That as the $678,000 of funds now on hand belonging to the Cherokees is chiefly composed of stocks of different values, the Secretary of the Interior may transfer from the Delawares to the Cherokees a proper proportion of the stocks now owned by the Delawares, of like grade and value, which transfer shall be in part of the *pro rata* contribution herein provided for by the Delawares to the funds of the Cherokee nation; but the balance of the *pro rata* contribution by the Delawares to said fund shall be in cash or U. S. bonds at their market value. All cash and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under this agreement, shall be invested and applied in accordance with the 23d article of the treaty with the Cherokees of August 11th, 1866.

On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered as above provided
289 shall become members of the Cherokee nation, with the same rights and immunities and the same participation (and no other) in the national funds as native Cherokees, save as hereinbefore provided. And the children hereafter born of such Delawares so incorporated into the Cherokee nation shall in all respects be regarded as native Cherokees.

WM. P. ROSS, *Principal Chief*,
RILEY KEYS, *Cherokee Delegation*.
JOHN (his x mark) CONNOR,
Principal Chief,
CHARLES JOURNEY CAKE,
ISAAC JOURNEY CAKE,
JOHN (his x mark) SARCOXIE,
Delaware Delegation.

Executed and delivered in our presence by the above-named delegates of the Cherokee and Delaware nations, at the city of Washington, in the District of Columbia, the day and year first above written.

JOHN G. PRATT.
WM. A. PHILLIPS.
EDWARD S. MENAGUS.

Ratified by the national committee June 15, 1867.

SMITH CHRISTIE,
President Nat. Committee.
H. D. REESE,
Clerk Nat. Committee.

Concurred in.

JOHN YOUNG,
Speaker of Council.
S. FOREMAN,
Clerk of Council.

Resolution in Furtherance of the Treaty with the Delawares.

Resolved by the national council, That the principal chief be, and he is hereby, authorized to appoint some suitable person or persons to transcribe the Cherokee census rolls and forward copies of them to the Secretary of the Interior at an early day as it can be done. Also, to call on the Secretary of the Interior for a copy of the Delaware census roll.

Tahlequah, C. N., June 17, 1867.
Approved.

WM. P. ROSS,
Principal Chief.

Stipulation.

It is hereby stipulated and agreed between counsel for the complainants and defendants in the above-entitled cause that the record in said case shall embrace the printed pages in a book entitled "Laws of the Cherokee Nation, passed in the years 1839–67, compiled by the authorities of the national council," printed in St. Louis in 1868, beginning on page 84 thereof with the words "Reso-
290 lution authorizing the appointment of commissioners to treat with the Delawares" and ending at the bottom of page 88 thereof, as "Complainant's Exhibit O 1."

July 30, 1901.

WALTER S. LOGAN,
Attorney for Complainants.
WILLIAM T. HUTCHINS,
Attorney for Defendants.

PLAINTIFFS' EXHIBIT P, MARCH 29, 1899.

An act admitting James Crutchfield to Cherokee citizenship.

SECTION 1. *Be it enacted by the national council*, That James Crutchfield be, and he is hereby, admitted to all of the rights and privileges of citizenship in this nation.

Tahlequah, C. N., Dec. 4, 1877.
Approved.

CHARLES THOMPSON.

An act providing for the appointment of a special commissioner to try and settle claims to Cherokee citizenship.

Whereas, — is of the utmost importance to the Cherokee nation that the claims of certain persons to citizenship hereof be speedily and permanently settled by competent authority: Therefore,

SECTION 1. *Be it enacted by the national council*, That there be, and is hereby, created a special commission to be designated "The commission on citizenship."

The commission on citizenship shall consist of three members, to be nominated and commissioned by the principal chief, with the advice and consent of the senate; they shall constitute a "tribunal of last resort," in the hearing and determining of causes hereinafter designated and none others. The national council in joint session shall elect one of the three commissioners (elect) to act as president.

They shall, at they same time, elect one attorney for the nation, who shall also be commissioned by the principal chief, and who, with the solicitor-general, shall act for the nation in all cases undergoing adjudication by the commission.

The commission on citizenship and the attorney for the nation, before entering upon their duties, shall qualify to support the constitution and laws of the Cherokee nation, and to discharge their duties without fear or favor, and to the best of their ability. The president of the commission on citizenship shall preside at the sessions of the same. In his absence or inability to serve, the senior (by age) member present shall preside. Any two members of the commission shall be competent to transact business.

The commission on citizenship shall have authority to appoint and qualify one clerk and one interpreter and to define their respective duties. They shall also have the right to command the presence and service of the sheriff or his deputy of the district wherein they may hold their session; whenever the services
291 of such sheriff or deputy shall not be available, then they (the commission) may, in their discretion, appoint some other citizen of the nation as a substitute, and who shall act in lieu of a sheriff.

The commission on citizenship shall have cognizance of, and exercise complete jurisdiction over, all cases arising under the constitution and laws of the Cherokee nation involving the right to citizenship of said nation, as hereinafter specified.

1st. Of all cases wherein a claimant to citizenship has applied to the supreme court or to the national council, and wherein the court or council has failed to adjudicate the same, whether it originated in the national council or was transmitted thereto for review from the supreme court.

2nd. Of all cases where the national council has adjudicated the same by a decision adverse to the claimants, and where such rejected claimants have appealed from the jurisdiction of the Cherokee nation to that of the United States subsequent to the date of the Chero-

kee treaty of July 19th, 1866, and whose cases have been reported by the United States agent under instructions from the Department of the Interior to the principal chief and are now on file in his office.

3rd. Of all cases where the claimants have ignored the authorities of the Cherokee nation and appealed to those of the United States.

4th. Of all cases where citizenship has been granted and there is presumptive evidence of fraud having been perpetrated to secure the same; or where citizens of the United States have married into this nation in violation of the law prohibiting the marriage of persons previously married without having obtained a divorce.

5th. Of all cases of persons of African descent arising under the Cherokee treaty of July 19, 1866, where the applicant claims to have complied with the requirements of the treaty, but has failed to receive recognition as a citizen by competent authority.

In decreeing the right to citizenship in the Cherokee nation, the commission shall be governed by the provision contained in the 5th section, amendments to article 3, of the constitution, to wit:

"All native-born Cherokees, all Indians and whites, legally members of the nation by adoption, and freedmen who have been liberated by voluntary act of their former owners or by law, as well as free colored persons who were in the country at the commencement of the rebellion and are now resident therein, or who may return within six months from the 19th day of July, 1866, and their descendants who reside within the limits of the Cherokee nation, shall be taken and deemed to be citizens of the Cherokee nation." And in addition thereto shall include all applicants "*bona fide*" residents who are of Cherokee parentage and who may be of not less than the half blood.

The recognition of the right of citizenship in the Cherokee nation, by virtue of the foregoing provisions, shall not be deemed as conferring the like right upon any person not an Indian who may be connected with such person by blood or affinity, unless such person shall comply with provisions of article 15, chapter 10, new code relating to intermarriage.

The commissioners on citizenship may admit as evidence in any of the cases named herein the oral testimony of witnesses under oath, the decisions, records, or other papers, or the certified copies thereof, in the clerk's office of the national council, or of the supreme court of the Cherokee nation, or other affidavits taken before
292 any court of record in the United States, duly authenticated, pertaining to any case brought before it under this act, and shall give such weight as to the credibility of such evidence, in making up their judgment thereon, as they may deem it entitled to. They may, in their discretion, limit the number of witnesses that may be introduced to establish the same fact in any one case, and fix the period for hearing and determining the same.

The commissioners shall keep in a book to be used for that purpose, a docket of all cases tried, with their decision thereon, a copy

of such decision to be furnished to the claimant, whether admitted or not, and such decision shall be final.

The evidence in every case tried by the commission, shall be carefully arranged, labelled, and numbered to correspond with the docket, and be filed for preservation with the national records.

Any person who shall be guilty of attempting, by bribes, intimidation, perjury, or any manner of unlawful means, to establish the claim of any applicant for citizenship, or by such means to defeat it, shall be deemed guilty of felony, and on conviction thereof by any court of competent jurisdiction shall suffer all the pains and penalties imposed for the commission of such offence in any other case; and if such peson be an attorney, he shall likewise be forever barred from practicing before any of the courts of this nation.

The commission on citizenship shall, for the accommodation of parties, hold their session at Tahlequah and Fort Gibson, the time of meeting and continuance at either of said places to be fixed by themselves: Provided, however, that they shall, within ten (10) days after the approval of this act, hold a preliminary meeting at Tahlequah for the purpose of organizing, when they shall, by public notice, announce the time and place of holding their first session for the trial of cases.

The members of the commission on citizenship shall receive severally for their services the sum of four dollars per day, the attorney, clerk, and interpreter the same (four dollars per day), payment to be made from the general fund, on preferred warrants of the principal chief, based on estimate for services rendered, duly certified by the president and clerk, as the same shall be required by the commission while in the discharge of duty. Witnesses summoned and appearing for the nation shall be allowed the same pay as is allowed witnesses in criminal cases, payable in the same manner upon certificates issued, recorded, and reported by the clerk of the commission.

The commission shall, through the office of the principal chief, and not later than the second (2nd) Monday of November next, report the result of their proceedings for the information of the national council: Provided, that all claimants for citizenship embraced within the provisions of this act who shall refuse or fail to bring their cases before the commission on citizenship for adjudication, and all such as shall be rejected by the commission, shall be held as intruders, and shall be reported by the commission to the principal chief as such, and the principal chief shall at once demand of the Secretary of the Interior or of the President of the United States their immediate expulsion from the limits of the Cherokee nation.

Tahlequah, C. N.

Approved, December 5, 1877.

CHARLES THOMPSON.

293 An act admitting certain persons therein named to citizenship.

SECTION 1. *Be it enacted by the national council*, That the following-named persons be, and they are hereby, admitted to Cherokee citizenship, to wit:

John Coleman and family, and the children of Nancy Quinton, sister to said John Coleman, Alsey Jane Wood, Martha E. Meadows, G. A. D. Donegan, and Andrew Ross and children.

Tahlequah, C. N.
Approved, December 8, 1877.

CHARLES THOMPSON,
Prin. Chief.

PLAINTIFFS' EXHIBIT Q, MARCH 29, 1899.

CHAPTER XIV.—*Enumeration of the Cherokee People.*

Article I.—Taking the census of the Cherokee nation in the year 1880.

SEC. 1. Two experts and responsible persons, who shall be residents of the district from which they are appointed, and one of whom talks (speaks) the Cherokee language, shall be appointed by the principal chief, in each district, are hereby directed and authorized to take the census of their respective districts, between the first day of March, and the first day of May, 1880, and make full and certified returns thereof to the principal chief on or before the first day of June of said year.

SEC. 2. The said census takers, before entering upon the duty hereby assigned them, shall take an oath for the full and impartial and correct performance of the same, as hereinafter defined.

SEC. 3. It shall be the duty of said census takers to make full and complete returns of all persons found residing or sojourning within the limits of their respective districts, at the time of making the enumeration as required by the foregoing section. And said returns shall show the names of all heads of families, giving a complete registration of births, deaths, and marriages; also the age and sex and names of all males above the age of eighteen years; the names of all females above the age of eighteen years; the names of all males under the age of eighteen years; the names of all females under the age of eighteen years; the names, sex, and ages of all orphans under sixteen years; the names of all whites entitled by law to citizenship within the ages above specified; the names of whites not so entitled; the names of all colored persons entitled by law to citizenship within said ages and the names of all such persons not so entitled, and the names of all Indians not so entitled; also a report of the chief productions of agriculture, including number of horses, cattle, hogs, sheep, etc., during the year ending May 1st, 1880.

SEC. 4. It shall be the duty of the principal chief to cause ruled blanks to be prepared, of a suitable and convenient form, and fur-

nished to said census takers for the purpose of making the enumeration herein provided for; and said census takers shall be allowed three dollars per day in the performance of the duties hereinbefore imposed upon them.

SEC. 5. It shall be the duty of the principal chief to cause a summary of the returns of said census to be prepared and laid
294 before the national council, together with the full returns of the same, at the beginning of the annual session thereof in 1880, and which returns shall serve as a basis for apportioning the representation of the several districts of the Cherokee nation in the national council, in accordance with the amendments to the constitution dated November 28th, 1866.

SEC. 6. All persons whose rights to citizenship in the Cherokee nation shall be called into question, and who shall be reported by the persons authorized by this act to take the census of the Cherokee nation, on the list of doubtful persons, shall be required by the principal chief to appear before the commission on citizenship, at Tahlequah, during the month of September, 1880, for the adjudication of their claims to Cherokee citizenship. (Dec. 2d, 1879.)

Article II.—Joint resolution providing for amendments to census rolls.

SEC. 7. Each census roll of the enumeration of 1880 are referred to a joint committee for each district, to be composed of one member from the senate and two members from the council of their respective districts, whose duty it shall be to carefully examine and pass upon each name appearing on said roll, and the names of any persons appearing thereon they may know, or have good reason to believe, are non-citizens and not entitled to appear on said census roll shall be plainly marked in red ink, "*Suspended for examination*," and the names of any person so marked shall not be placed upon the record to be made of citizens of the Cherokee nation by the persons to be appointed for that purpose by the proper authority; and the names of any Cherokee citizens, *bona fide*, whose names have been omitted through an error or mistake of the census takers shall be added to the census roll as a part of the census of 1880.

SEC. 8. The rolls shall be signed and approved by the several committees and returned to the executive department of the nation. (Nov. 8th, 1880.)

Article III.—An act authenticating the census returns of 1880, and providing for a copy thereof.

SEC. 9. The register or schedule of citizens of the Cherokee nation, submitted to the principal chief by the census takers of the year 1880 under requirement of the act providing for taking the census of the Cherokee nation, as the said register or schedule has been examined, revised, or amended by the committees of the present national council duly appointed for the purpose, and by them sub-

mitted to and accepted by this council, is hereby approved as a true and correct list of persons acknowledged and recognized to be citizens of the Cherokee nation, at and within the time the said census was authorized to be taken.

SEC. 10. There shall be made in fair and legible handwriting, and under the supervision of the principal chief, a neat and complete alphabetical transcript, or copy, of all names of citizens and non-citizens to be found in the census returns, revised and amended as before mentioned, with such descriptive matters and things as are attached to each name. The work of making such copy shall be done by two clerks of the executive department, duly appointed and instructed by the principal chief to perform the same, and who
295 shall receive as compensation therefor, when the said work shall have been finished, approved, and filed as provided by this act, the sum of two hundred and fifty (250) dollars each, for which amounts the principal chief is authorized to draw preferred warrants upon the general fund. The said transcript, or copy, shall be made upon blank forms of the like kind furnished the census takers to take the census of 1880.

SEC. 11. When the said copy shall be made and completed as hereinbefore provided, the "returns" of each district, as copied, shall be by the said clerks submitted to the principal chief, duly certified to by them as to pages, number of names in each schedule, and that the copy has been made correctly according to the provisions of this act. When so certified, and upon the examination of the principal chief approved by him, he shall be authorized to endorse the copy of the returns of each district as so approved, and place the same on file in the executive office for safe keeping and general reference under his care and direction.

SEC. 12. Any person, citizen of this nation at the time of taking the census of 1880 (March and April), who shall have been inadvertently omitted to be registered by the census takers or the committee appointed to revise the census, and whose name does not appear enrolled or recorded otherwise, and who shall desire to be enrolled as a citizen, shall be required to make satisfactory showing to the principal chief, by methods and evidence which he may consider sufficient in such case, that such person was a citizen of the nation when the census was being taken, and of what district; and the principal chief is required to report the names of all persons, who shall apply under this section, with the material facts ascertained by him in each case, to the national council of 1881, for their information and action.

SEC. 13. All persons whose names have been reported by the census takers in Schedule 1 as citizens, and whom the revising committee of this council have marked and signified as not entitled to be so returned, shall be summoned by the principal chief to appear before the commission on citizenship at their next September session, 1881, for the adjudication of their claims, according to the provisions of law relating to "doubtful citizens;" and the names of all persons who have appeared or shall appear before said commis-

sion as "doubtful citizens" either by authority of the act of December 3d, 1879, authorizing the taking of the census, not including "new claimants" enrolled in Schedule 4, or by authority of this act, in whose favor the said commission have decided or shall decide, shall be by the executive secretary attached to the official copy of citizens hereinbefore authorized to be made and filed in the executive office.

(Tahlequah, C. N.)
Approved December 9th, 1880.

D. W. BUSHYHEAD,
Principal Chief, C. N.

296 PLAINTIFFS' EXHIBIT R, MARCH 29, 1899.

Acts Admitting to Citizenship.

Admissions and readmissions to citizenship, 1881.

Admitted Conditionally.

Name.	Date of act.
1. Ridge Paschal.	November 8th, 1881.

(Condition of admission.)—That he locate permanently in the nation within twelve months from date of act.

Admitted Conditionally.

Names.	Date of act.
1. Mary Alice Halsel, late " " Crutchfield. 2. W. E. Halsel.	November 18th, 1881.

(Condition of admission.)—That W. E. Halsel comply with intermarriage law, and that they permanently locate in the Cherokee nation within six months from date of act.

Admitted Unconditionally.

Name.	Date of act.
1. Joseph B. Harris.	December 5th, 1881.

Admitted Unconditionally.

Names.	Date of act.
1. Hugh Carrol. 2. Lucy " (wife). 3. Nora " 4. Lizzie " children.	December 7th, 1881.

Admitted Unconditionally.

Names.	Date of act.
1. Samuel Chirley (Cher.) and wife.	December 8th, 1881.
(Children:)	
2. Eliza Chirley.	
3. Onata "	
4. Susan "	
5. Annie "	
6. Frank "	
7. Sam "	
8. Lullu "	
9. Linda "	
(Grandchildren:)	
10. Mary and Jennie Panther.	
11. Charley "	
12. Collin "	

Admitted Conditionally.

Names.	Date of act.
1. Susan N. Dodge.	December 8th, 1881.
(Children:)	
2. Gertrude Dodge.	
3. William "	
(Delawares.)	

(Condition of admission.)—When the above-named parties make full payment to the treasurer of the Cherokee nation, as specified in the agreement between the Cherokees and Delawares of April 8th, 1867, and take the treasurer's receipt for such payment.

297 An act making an appropriation for the relief of North Carolina Cherokees lately removed to this nation.

SEC. 1. *Be it enacted by the national council*, That the sum of two thousand six hundred and eighty-eight dollars be, and the same is hereby, appropriated out of the general fund for the purpose of relieving the present necessities of those of the North Carolina "band" of Cherokees, numbering in the aggregate one hundred and sixty-eight persons, who have lately removed to this nation under an invitation extended them by and through an act of the national council, approved December 3d, 1880, and that the said sum of two thousand six hundred and eighty-eight dollars be paid, share and share alike, to the persons now living and whose names appear as members of this band upon the rolls now on file in the executive department of this nation.

SEC. 2. *Be it further enacted*, That for the purpose of carrying the

provisions of this act more fully into effect the national treasurer is hereby directed and required to divert the sum of two thousand six hundred and eighty-eight dollars out of any monies now in the hands of the subtreasurer at St. Louis, Missouri, belonging to the general fund, and pay the same on the order or warrant of the principal chief at such time and place as he may direct, in equal proportion to each, according to the rolls now on file in the office of the executive.

Approved, December 16, 1881.

D. W. BUSHYHEAD,
Principal Chief.

Acts Admitting to Citizenship.

An act readmitting Joseph Quinton, Lydia Quinton, and Moses Quinton to citizenship.

Be it enacted by the national council, That Joseph Quinton and family (wife, Lydia Quinton; son, Moses Quinton), be and are hereby readmitted to all the rights and privileges of Cherokee citizens, November 15, 1882.

Approved, November 21, 1882.

D. W. BUSHYHEAD,
Principal Chief.

An act to admit Martha Shufeldt and children Laura Ann John, Frank and Percy Shufeldt and Minnie Chouteau to citizenship.

Be it enacted by the national council, That Martha Shufeldt and children, Laura Ann John, Frank and Percy Shufeldt, and Minnie Chouteau, all Shawnee Indians by blood, be, and they are hereby, admitted to all the rights, privileges, and immunities of other Shawnees residence in and citizens of the Cherokee nation on the same conditions imposed by the agreement between the Cherokee nation and the Shawnees, concluded June 7th, 1869, and approved by the President June 9th, 1869; provided, that the persons herein admitted shall pay to the treasurer of the Cherokee nation the sum of one hundred and ninety-five dollars each, the same being the amount *per capita* paid by the Shawnees now citizens of the Cherokee
298 nation; and provided further, that the above amounts shall be paid by each of said Shawnees before any rights shall accrue under this act.

SEC. 2. That M. C. Shufeldt (a white man and father of the above-named children) shall be required to comply with the law of this nation entitled "Intermarriage of white men and foreigners" before he shall be recognized as a citizen of this nation.

Approved, December 9, 1882.

D. W. BUSHYHEAD,
Principal Chief.

Acts Admitting to Citizenship.

Names.	Conditions and remarks.
Date of act, Dec. 6, 1883.	
1. Ida L. Ward, formerly Ida L. Barker (Cherokee). 2. R. J. Ward (husband). 3. Sarah E. Ward. 4. Susan E. Ward. 5. Cora J. Ward. 6. Rob't J. Ward. (Children.)	Provided they move in the nation within one year from date of act.
Dec. 6, 1883.	
1. W. H. Barker, Cherokee. 2. E. C. Barker. 3. S. B. Barker. (Family.)	None.
Dec. 6, 1883.	
1. R. B. Harris and family.	Amending act of Dec. 5, 1881, so as to allow the family a year from this date to move within the nation.
Nov. 21, 1883.	
1. Avi Bailey. 2. Loften Bailey. 3. Mary J. Bailey. 4. Phebie E. Bailey.	None.
Nov. 13, 1883.	
1. Kate Clayweil (late Kate Hastings). 2. Albert G. Maxfield. 3. Anna M. Maxfield. 4. Stepen A. Maxfield. (Children.)	Cherokees by blood.

PLAINTIFFS' EXHIBIT S, MARCH 29, 1899.

Constitution.

The Eastern and Western Cherokees having again reunited, and become one body politic, under the style and title of the Cherokee nation:

Therefore, we, the people of the Cherokee nation, in national convention assembled, in order to establish justice, insure tranquillity, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom—acknowledging with humility and gratitude the goodness of the Sovereign Ruler of the Universe

in permitting us so to do, and imploring His aid and guidance in its accomplishment—do ordain and establish this constitution for the government of the Cherokee nation.

299 ARTICLE I.

SECTION 1. The boundary of the Cherokee nation shall be that described in the treaty of 1833, between the United States and Western Cherokees, subject to such extension as may be made in the adjustment of the unfinished business with the United States.

SEC. 2. The lands of the Cherokee nation shall remain common property; but the improvements made thereon, and in the possession of the citizens of the nation, are the exclusive and indefeasible property of the citizens, respectively, who made or may rightfully be in possession of them: *Provided*, That the citizens of the nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements, in any manner whatever, to the United States, individual States, or to individual citizens thereof; and that, whenever any citizen shall remove with his effects out of the limits of this nation, and becomes a citizen of any other government, all his rights and privileges as a citizen of this nation shall cease: *Provided, nevertheless*, That the national council shall have power to readmit, by law, to all the rights of citizenship, any such person or persons who may, at any time, desire to return to the nation, on memorializing the national council for such readmission.

Moreover, the national council shall have power to adopt such laws and regulations, as its wisdom may deem expedient and proper, to prevent citizens from monopolizing improvements, with the view of speculation.

ARTICLE II.

SECTION 1. The power of this government shall be divided into three distinct departments—the legislative, the executive, and the judicial.

SEC. 2. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE III.

SECTION 1. The legislative power shall be vested in two distinct branches—a national committee and council, and the style of their acts shall be: *Be it enacted by the national council.*

SEC. 2. The national council shall make provision, by law, for laying off the Cherokee nation into eight districts; and, if subsequently it should be deemed expedient, one or two may be added thereto.

SEC. 3. The national committee shall consist of two members from each district, and the council shall consist of three members from

each district, to be chosen by the qualified electors in their respective districts for two years; the elections to be held in the respective districts every two years, at such times and places as may be directed by law.

The national council shall, after the present year, be held annually, to be convened on the first Monday in October, at such place as may be designated by the national council, or, in case of emergency, by the principal chief.

SEC. 4. Before the districts shall be laid off, any election
300 which may take place shall be by general vote of the electors throughout the nation for all officers to be elected.

The first election for all the officers of the government—chiefs, executive council, members of the national council, judges, and sheriffs—shall be held at Tahlequah before the rising of this convention, and the term of services of all officers elected previous to the first Monday in October, 1839, shall be extended to embrace, in addition to the regular constitutional term, the time intervening from their election to the first Monday in October, 1839.

SEC. 5. No person shall be eligible to a seat in the national council but a free Cherokee male citizen, who shall have attained to the age of twenty-five years.

The descendants of Cherokee men by all free women, except the African race, whose parents may have been living together as man and wife, according to the customs and laws of this nation, shall be entitled to all the rights and privileges of this nation as well as the posterity of Cherokee women by all free men. No person who is of negro or mulatto parentage, either by the father's or mother's side, shall be eligible to hold any office of profit, honor, or trust under this government.

SEC. 6. The electors and members of the national council shall in all cases, except those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and at the national council, in going to and returning.

SEC. 7. In all elections by the people, the electors shall vote *viva voce*.

All free male citizens, who have attained to the age of eighteen years, shall be equally entitled to vote at all public elections.

SEC. 8. Each branch of the national council shall judge of the qualifications and returns of its own members, and determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds, expel a member; but not a second time for the same offense.

SEC. 9. Each branch of the national council, when assembled, shall choose its own officers; a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalty as each branch may prescribe.

SEC. 10. The members of the national committee shall each receive from the public treasury a compensation for their services, which shall be three dollars per day during their attendence at the

national council; and the members of the council shall each receive three dollars per day for their services during their attendance at the national council: *Provided*, That the same may be increased or diminished by law; but no alteration shall take effect during the period of service of the members of the national council by whom such alteration may have been made.

SEC. 11. The national council shall regulate by law by whom and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

SEC. 12. Each member of the national council, before he takes his seat, shall take the following oath or affirmation:

"I, A. B., do solemnly swear (or affirm, as the case may be), that I have not obtained my election by bribery, threats, or any
301 undue or unlawful means, used by myself or others, by my desire and approbation for that purpose; that I consider myself constitutionally qualified as a member of ——, and that on all questions and measures which may come before me, I will so give my vote, and so conduct myself, as in my judgment shall appear most conducive to the interest and prosperity of this nation, and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power, observe, conform to, support, and defend the constitution thereof."

SEC. 13. No person who may be convicted of felony shall be eligible to any office or appointment of honor, profit, or trust within this nation.

SEC. 14. The national council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the nation, which shall not be contrary to this constitution.

SEC. 15. It shall be the duty of the national council to pass such laws as may be necessary and proper to decide differences by arbitration, to be appointed by the parties who may choose that summary mode of adjustment.

SEC. 16. No power of suspending the laws of this nation shall be exercised unless by the national council or its authority.

SEC. 17. No retrospective law, nor any law impairing the obligation of contracts, shall be passed.

SEC. 18. The national council shall have power to make laws for laying and collecting taxes for the purpose of raising a revenue.

SEC. 19. All bills making appropriations shall originate in the national committee, but the council may propose amendments or reject the same. All other bills may originate in either branch, subject to the concurrence or rejection of the other.

SEC. 20. All acknowledged treaties shall be the supreme law of the land, and the national council shall have the sole power of deciding on the construction of all treaty stipulations.

SEC. 21. The council shall have the sole power of impeaching. All impeachments shall be tried by the national committee. When sitting for that purpose, the member shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 22. The principal chief, assistant principal chief, and all civil officers shall be liable to impeachment for misdemeanor in office, but judgment in such cases shall not extend farther than removal from office and disqualification to hold any office of honor, trust, or profit under the government of this nation.

The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

ARTICLE IV.

SECTION 1. The supreme executive power of this nation shall be vested in a principal chief, who shall be styled "the principal chief of the Cherokee nation."

The principal chief shall hold his office for the term of four years, and shall be elected by the qualified electors on the same day and at the places where they shall respectively vote for members to the national council.

302 The returns of the election for principal chief shall be sealed up and directed to the president of the national committee, who shall open and publish them in the presence of the national council assembled. The person having the highest number of votes shall be principal chief, but if two or more shall be equal and highest in votes, one of them shall be chosen by joint vote of both branches of the council. The manner of determining contested elections shall be directed by law.

SEC. 2. No person, except a natural born citizen, shall be eligible to the office of principal chief; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years.

SEC. 3. There shall also be chosen at the same time by the qualified electors in the same manner, for four years, an assistant principal chief, who shall have attained to the age of thirty-five years.

SEC. 4. In case of the removal of the principal chief from office, or of his death or resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the assistant principal chief, until the disability be removed or the vacancy filled by the national council.

SEC. 5. The national council may, by law, provide for the case of removal, death, resignation, or disability of both the principal and assistant principal chiefs, declaring what officer shall then act as principal chief until the disability be removed or a principal chief shall be elected.

SEC. 6. The principal and assistant principal chiefs shall, at stated times, receive for their services a compensation which shall neither be increased or diminished during the period for which they shall have been elected, and they shall not receive within that period any other emolument from the Cherokee nation or any other government.

SEC. 7. Before the principal chief enters on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear or affirm that I will faithfully execute the duties of principal chief of the Cherokee nation, and will, to the best of my ability, preserve, protect, and defend the constitution of the Cherokee nation."

SEC. 8. He may, on extraordinary occasions, convene the national council at the seat of government.

SEC. 9. He shall, from time to time, give to the national council information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. It shall be his duty to visit the different districts at least once in two years to inform himself of the general condition of the country.

SEC. 12. The assistant principal chief shall, by virtue of his office, aid and advise the principal chief in the administration of the government at all times during his continuance in office.

SEC. 13. Vacancies that may occur in offices, the appointment of which is vested in the national council, shall be filled by the principal chief during the recess of the national council by granting commissions which shall expire at the end of the next session thereof.

SEC. 14. Every bill which shall pass both branches of the national council shall, before it becomes a law, be presented to the principal chief; if he approves, he shall sign it; but if not, he shall return it, with his objections, to that branch in which it may have orig-
303 inated, who shall enter the objections at large on their journals and proceed to reconsider it; if, after such reconsideration, two-thirds of that branch shall agree to pass the bill, it shall be sent, together with the objections, to the other branch, by which it shall likewise be reconsidered, and if approved by two-thirds of that branch, it shall become a law. If any bill shall not be returned by the principal chief within five days (Sundays excepted), after the same has been presented to him, it shall become a law in like manner as if he had signed it, unless the national council, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

SEC. 15. Members of the national council and all officers, executive and judicial, shall be bound by oath to support the constitution of this nation, and to perform the duties of their respective offices with fidelity.

SEC. 16. In case of disagreement between the two branches of the national council with respect to the time of adjournment, the principal chief shall have power to adjourn the same to such time as he may deem proper; *provided*, it be not a period beyond the next constitutional meeting thereof.

SEC. 17. The principal chief shall, during the session of the national council, attend at the seat of government.

SEC. 18. There shall be a council composed of five persons, to be appointed by the national council, whom the principal chief shall have full power at his discretion to assemble; he, together with the

assistant principal chief and the counselors, or a majority of them, may, from time to time, hold and keep a council for ordering and directing the affairs of the nation according to law; *provided*, the national council shall have power to reduce the number, if deemed expedient, after the first term of service to a number not less than three.

SEC. 19. The members of the executive council shall be chosen for the term of two years.

SEC. 20. The resolutions and advice of the council shall be recorded in a register and signed by the members agreeing thereto, which may be called for by either branch of the national council; and any counselor may enter his dissent to the majority.

SEC. 21. The treasurer of the Cherokee nation shall be chosen by a joint vote of both branches of the national council for the term of four years.

SEC. 22. The treasurer shall, before entering on the duties of his office, give bond to the nation, with sureties, to the satisfaction of the national council, for the faithful discharge of his trust.

SEC. 23. No money shall be drawn from the treasury but by warrant from the principal chief, and in consequence of appropriations made by law.

SEC. 24. It shall be the duty of the treasurer to receive all public moneys, and to make a regular statement and account of the receipts and expenditures of all public moneys at the annual session of the national council.

ARTICLE V.

SECTION 1. The judicial powers shall be vested in a supreme court and such circuit and inferior courts as the national council may from time to time ordain and establish.

304 SEC. 2. The judges of the supreme and circuit courts shall hold their commissions for the terms of four years, but any of them may be removed from office on the address of two-thirds of each branch of the national council to the principal chief for that purpose.

SEC. 3. The judges of the supreme and circuit courts shall at stated times receive a compensation which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the government of this nation or any other power.

SEC. 4. No person shall be appointed a judge of any of the courts until he shall have attained the age of thirty years.

SEC. 5. The judges of the supreme and circuit courts shall be elected by the national council, and there shall be appointed in each district as many justices of the peace as it may be deemed expedient for the

public good, whose powers, duties, and duration in office shall be clearly designated by law.

SEC. 6. The judges of the supreme court and of the circuit courts shall have complete criminal jurisdiction in such cases and in such manner as may be pointed out by law.

SEC. 7. No judge shall sit on trial of any cause when the parties are connected [with him] by affinity or consanguinity, except by consent of the parties. In case all the judges of the supreme court shall be interested in the issue of any cause or related to all or either of the parties, the national council may provide by law for the selection of a suitable number of persons of good character and knowledge for the determination thereof, and who shall be specially commissioned for the adjudication of such case by the principal chief.

SEC. 8. All writs and other process shall run "In the name of the Cherokee nation," and bear test and be signed by the respective clerks.

SEC. 9. Indictments shall conclude, "Against the peace and dignity of the Cherokee nation."

SEC. 10. The supreme court shall, after the present year, hold its session annually at the seat of government, to be convened on the first Monday of October in each year.

SEC. 11. In all criminal prosecutions the accused shall have the right of being heard; of demanding the nature and cause of the accusation; of meeting the witnesses face to face; of having compulsory process for obtaining witnesses in his or their favor; and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; nor shall the accused be compelled to give evidence against himself.

SEC. 12. The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place or to seize any person or thing shall issue without describing them as nearly as may be, nor without good cause, supported by oath or affirmation.

SEC. 13. All persons shall be bailable by sufficient securities, unless for capital offenses, where the proof is evident or presumption great.

305 ARTICLE VI.

SECTION 1. No person who denies the being of a God, or future state of reward and punishment, shall hold any office in the civil department in this nation.

SEC. 2. The free exercise of religious worship and serving God without distinction shall forever be enjoyed within the limits of this nation: *Provided*, That this liberty of conscience shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of this nation.

SEC. 3. When the national council shall determine the expediency of appointing delegates or other public agents for the purpose of transacting business with the Government of the United States, the principal chief shall recommend, and, by the advice and consent of the national committee, appoint and commission such delegates or public agents accordingly. On all matters of interest touching the rights of the citizens of this nation, which may require the attention of the United States Government, the principal chief shall keep up a friendly correspondence with that Government through the medium of its proper officers.

SEC. 4. All commissions shall be "In the name and by the authority of the Cherokee nation," and be sealed with the seal of the nation and signed by the principal chief. The principal chief shall make use of his private seal until a national seal shall be provided.

SEC. 5. A sheriff shall be elected in each district by the qualified electors thereof, who shall hold his office two years, unless sooner removed. Should a vacancy occur subsequent to an election, it shall be filled by the principal chief, as in other cases, and the person so appointed shall continue in office until the next regular election.

SEC. 6. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall the property of any person be taken and applied to public use without a just and fair compensation: *Provided*, That nothing in this clause shall be so construed as to impair the right and power of the national council to lay and collect taxes.

SEC. 7. The right of trial by jury shall remain inviolate, and every person, for injury sustained in person, property, or reputation, shall have remedy by due course of law.

SEC. 8. The appointment of all officers, not otherwise directed by this constitution, shall be vested in the national council.

SEC. 9. Religion, morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools and the means of education shall be forever encouraged in this nation.

SEC. 10. The national council may propose such amendments to this constitution as two-thirds of each branch may deem expedient, and the principal chief shall issue a proclamation, directing all civil officers of the several districts to promulgate the same as extensively as possible within their respective districts at least six months previous to the next general election, and if, at the first session of the national council, after such general election, two-thirds of each branch shall, by ayes and noes, ratify such proposed amendments, they shall be valid to all intent and purposes, as parts of this constitution: *Provided*, That such proposed amendments shall be read on three several days in each branch, as well when the same are proposed as when they are ratified.

306 Done in convention at Tahlequah, Cherokee nation, this sixth day of September, 1839.

GEORGE LOWREY,
President of the National Convention.
HAIR CONRAD (his x mark).
JOHN BENGE (his x mark).
ARCHIBALD CAMPBELL (his x mark).
THOMAS CANDY.
JOHN DREW.
GEORGE GUESS (his x mark).
WALTER SCOTT ADAIR.
YOUNG ELDERS (his x mark).
WILL SHOREY COODEY.
THOMAS FOREMAN.
RICHARD TAYLOR.
THOMAS FOX TAYLOR.
O KAN STO TAH LOGAN (his x mark).
JAMES SPEARS (his x mark).
JOHN SPEARS.
STEPHEN FOREMAN.
YOUNG GLASS (his x mark).
LOONEY PRICE.
TOBACCO WILL (his x mark).
MAJOR PULLUM (his x mark).
MOSES PARRIS.
GEORGE WASHINGTON GUNTER.
KENCH LOGAN (his x mark).
YOUNG WOLF.
JOSEPH MARTIN LYNCH.
SAL LA TEE SKEE WATTS (his x mark).
GEORGE BREWER (his x mark).
JOSHUA BUFFINGTON.
JESSE BUSHYHEAD.
JESSE RUSSELL.
JOHN FLETCHER BOOT (his x mark).
CRYING BUFFALO (his x mark).
DARK FLUTE (his x mark).
OO LA YO A (his x mark).
SOFT SHELL TURTLE (his x mark).
EDWARD GUNTER.
DANIEL COLSTON (his x mark).
LEWIS ROSS.
GEORGE HICKS.
TURTLE FIELDS (his x mark).
ELIJAH HICKS.
TAH LAH SEE NEE (his x mark).
JAMES BROWN.
CHARLES COODEY.
RILEY KEYS.
DANIEL McCOY.
LEWIS MELTON.

307 *Proclamation and Amendments to the Constitution.*

[Adopted November 26, 1866.]

Proclamation by the Principal Chief.

Whereas the national council adopted certain amendments to the constitution of the Cherokee nation and submitted the same to a general convention of the people of the Cherokee nation, called at Tahlequah on the 26th day of November, A. D. 1866, and which said amendments with the preamble thereto attached were in the following words, to wit:

Whereas, by the treaty executed at Washington on the 19th day of July, A. D. 1866, between the United States and the Cherokee nation through its delegation, ratified by the Senate and officially promulgated by the President of the United States August 11, 1866, certain things were agreed to between the parties to said treaty, involving changes in the constitution of the Cherokee nation, which changes cannot be accomplished by the usual mode; and

Whereas it is the desire of the people and government of the Cherokee nation to carry out in good faith all of its obligations to the end that law and order be preserved and the institutions of their government maintained; therefore,

Be it resolved by the national council, That the following amendments to the constitution of the Cherokee nation be submitted to a convention of the Cherokee people, to assemble at Tahlequah, on the twenty-sixth (26th) day of November, A. D. 1866, under the proclamation of the principal chief, and should said amendments hereunto annexed be ratified by said convention, then they shall be officially published and declared by the principal chief to be, and shall constitute, a part or parts of the constitution of the Cherokee nation.

Amendments.

Amendments to article I.

SECTION 1. The boundaries of the Cherokee nation shall be that described in the treaty of 1833 between the United States and the Western Cherokees, subject to such modifications as may be made necessary by the 17th article of the treaty concluded at Washington city on the 19th day of July, 1866, between the United States and the Cherokee nation.

SEC. 2. The lands of the Cherokee nation shall remain common property until the national council shall request the survey and allotment of the same in accordance with the provisions of article 20 of the treaty of 19th of July, 1866, between the United States and the *the* Cherokee nation.

Amendments to article III.

SECTION 1. The upper house of the national council, known as the national committee, shall be hereafter known and styled the senate of the Cherokee nation, and shall consist of two senators for every district in the Cherokee nation.

SEC. 2. The council shall consist of two members from each
308 district, and when a district shall have to exceed two hundred voters it shall have an additional member, and for every additional two hundred voters in said district, upwards of four hundred, it shall have an additional member: *Provided*, That when any district shall have less than one hundred voters according to the census it shall be entitled to one representative.

SEC. 3. In order to ascertain and fix the representation to the council provided for by the preceding section, the national council shall cause to be taken, as soon as practicable, a census of the population of the Cherokee nation according to districts. A second census shall be taken in like manner in the year 1870 and each ten years thereafter, and the national council shall regularly apportion representation among the several districts as provided in the preceding section, agreeably to such census. The first apportionment provided for above shall be made before the first day of June, and shall govern the election to be held on the first Monday in August, 1867.

SEC. 4. The national council shall, after the present year, be held annually, to be convened on the first Monday in November, at such place as may be designated by the national council or, in case of emergency, by the principal chief.

SEC. 5. No person shall be eligible to a seat in the national council but a male citizen of the Cherokee nation who shall have attained the age of twenty-five years, and who shall have been a *bona fide* resident of the district in which he may be elected at least six months immediately preceding such election. All native-born Cherokees, all Indians and whites legally members of the nation by adoption, and all freedmen who have been liberated by voluntary act of their former owners or by law, as well as free colored persons who were in the country at the commencement of the rebellion and are now residents therein, or who may return within six months from the 19th day of July, 1866, and their descendants who reside within the limits of the Cherokee nation, shall be taken and deemed to be citizens of the Cherokee nation.

SEC. 6. The members of the national council shall each receive from the public treasury a compensation for their services, which shall be three dollars per day, during their attendance at the national council upon any regular session, not exceeding thirty days: *Provided*, that *that* the *per diem* allowance may be increased or diminished by law; but no alteration shall take effect during the period of service of the members of the national council by whom such alteration may have been made.

SEC. 7. All male citizens who have attained the age of eighteen

years shall be deemed qualified electors of the Cherokee nation, and there shall be no restrictions by law, save such as are required for persons convicted of crime, or for such limit as to residence, not exceeding six months in the district where the vote is offered, as may be required by census or registration.

Amendments to article V.

SECTION 1. The supreme court shall consist of three judges, who shall be elected by the national council, and whose duties, jurisdiction, and compensation shall be defined by law in the manner prescribed by the constitution. The national council at its
309 annual session in 1867 shall elect one of the supreme judges for three years, one for two years, and one for one year, and at each annual session of the national council thereafter shall elect one supreme judge, whose official term shall be three years.

SEC. 2. The judges of the circuit court shall hereafter be elected by the people, for the term of four years, and shall have the same jurisdiction, discharge the same duties, and be compensated in the same manner as is now provided for by the constitution. There shall be elected in like manner in and for each district as many judges as it may be deemed expedient for the public good, whose powers, duties, and duration in office shall be clearly designated by law.

Amendments to article VII.

SECTION 1. Neither slavery nor involuntary servitude shall ever hereafter exist in the Cherokee nation, otherwise than in the punishment of crime, whereof the party shall have been duly convicted; and any provision of the constitution of the Cherokee nation conflicting with the foregoing section is hereby annulled.

SEC. 2. The persons now holding office shall continue therein, except as may be otherwise expressly provided by law for Canadian district, until their successors be commissioned in November, 1867.

Tahlequah, Cherokee nation, November 26, 1866.

SMITH CHRISTIE,
President of National Committee.

Concurred:

WRITER,
Speaker of Council.

Approved:

WILL P. ROSS.

At a general convention of the people of the Cherokee nation, held at Tahlequah, Cherokee nation, on the 28th day of November, A. D. 1866, for the purpose of taking into consideration the foregoing amendments to the constitution of the Cherokee nation, and whereof Riley Keys, chief justice of the supreme court, was chosen president, and Budd Gritts, secretary, the said amendments to the constitution of the Cherokee nation were read, considered, and severally approved, and adopted by the Cherokee people.

In testimony whereof the president and secretary of said convention have subscribed the same at Tahlequah, Cherokee nation, on this the 28th day of November, A. D. 1866.

RILEY KEYS,
President of the Convention.
BUDD GRITTS, *Secretary.*

And whereas the foregoing amendments to the constitution were duly submitted to the said general convention of the Cherokee people, and were severally read, considered, and adopted on the 28th day of November, A. D. 1866: Now,

Therefore, be it known that I, William P. Ross, principal chief of the Cherokee nation, do issue this my proclamation declaring said amendments to be a part of the constitution of the Cherokee nation.

310 In testimony whereof I have hereunto subscribed my name this the 7th day of December, A. D. 1866.

WILL P. ROSS,
Principal Chief.

Deposition of Frank J. Boudinot, for Claimants, Taken at Washington, D. C., on the 19th Day of April, A. D. 1899.

Claimants' counsel, M. E. Harby; defendants' counsel, John J. Hemphill.

FRANK J. BOUDINOT, having been produced as a witness on behalf of the plaintiffs, was by me sworn before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and said his name is Frank J. Boudinot; that his occupation is that of a lawyer; that he is 32 years of age, and that his place of residence is Fort Gibson, Ind. T., and that he has no interest direct or indirect in the claim which is the subject of inquiry in said cause and that he is not related to the plaintiffs, and thereupon said Frank J. Boudinot was examined by the counsel for the plaintiffs, and in answer to interrogatories testified as follows:

1 question. Mr. Boudinot, you married the sister of the wife of Mr. R. C. Adams?

Answer. I did.

2 question. Beyond that marriage you have no other connection with any of the plaintiffs in this case?

Answer. Not that I know of.

3 question. Where were you born?

Answer. In the Cherokee nation, Ind. Ter.

4 question. Whereabouts?

Answer. In Canadian district, near Muscogee.

5 question. Your father is a Cherokee?

Answer. Yes, sir.

6 question. Where were you educated?

Answer. I went to school first at the Baptist Indian university, near Muscogee, Ind. T., was graduated there in 1886; afterwards went to Flint high school, at Flint, Mich. I had a diploma from there in 1887. In 1894 and 1895 I attended the law school at Ann Arbor, Mich., taking a special course.

7 question. Since then you have been a lawyer in the Indian Territory?

Answer. Yes, sir.

8 question. What political positions have you held in the Indian Territory?

Answer. In 1887 I was what we call down there an assistant executive secretary. I was a clerk in the executive office. In 1888 and 1889 I was a clerk of the Cherokee supreme court. In 1890 and 1891 I was the manager of the national newspaper, Cherokee Advocate, and 1892 and 1893 and part of 1891 I was engrossing clerk of the Cherokee senate. In 1894 and 1895 I was at school. In 1896 I was elected as one of the attorneys of the Cherokee nation before the Dawes commission in the matter of applications for citizenship; and the last two years I have been clerk of the joint
311 committee of the national council to settle with the Cherokee treasurer. I was clerk also in the interim between councils in 1897 for the Cherokee commission to treat with the Dawes commission. I have served as clerk of various committees of the Cherokee council through the last three or four years. Every council since I have been back from Ann Arbor I have served on some of the committees as clerk.

9 question. Do you know of the case of Moses Whitmire, trustee for the freedmen of the Cherokee nation, against the Cherokee Nation and the United States, No. 17209, in the Court of Claims of the United States?

Answer. Yes, sir; I know something about the case.

10 question. Were you a partner of E. C. Boudinot?

Answer. Yes, sir; before he died.

11 question. He was your brother?

Answer. He was my brother.

12 question. He is now dead?

Answer. He died in February, 1896—the 20th.

13 question. Do you know Jake Guthrie?

Answer. Yes.

14 question. State just what he is, as far as you know, and who he is.

Answer. He is a citizen of the Cherokee nation by adoption, having married a Shawnee. He lives some distance from Tahlequah. I have met him at Tahlequah.

15 question. Do you know of a certain roll the Cherokees call the Wallace roll?

Answer. I have heard of it. I know something about it.

16 question. State what you know about that roll.

Answer. The records will show that that roll was made by authority of the United States and the Cherokees had nothing to do with the making of it. It was for the purpose of disbursing the $75,000 appropriation as made by Congress to pay the freedmen, Delawares and Shawnees.

17 question. When was it made?

Answer. I don't remember exactly when it was made.

18 question. You think it was in 1890 or 1891?

Answer. Come to think of it, it was before 1890.

19 question. Where is this Wallace roll now?

Answer. It is on file here in the department, I suppose.

20 question. It is well known as the Wallace roll?

Answer. It is referred to as the Wallace roll.

21 question. State when was the first time that you heard of the compromise in this case of Whitmire against the Cherokee Nation.

Answer. Sometime about the beginning of the council in November, 1895. My brother, E. C. Boudinot, and I were going to dinner, past the National hotel in Tahlequah, and Jake Guthrie came to the fence and called my brother to him—held a conversation with him which I didn't hear. As we went up to the house he told me what Guthrie had said—that there was a scheme on foot, as they put it, to compromise the Whitmire case, and that if the compromise was effected there would be considerable money in it, and from then on we talked of the compromise as proposed, which was to set aside the Wallace roll on the part of Whitmire and place the Cherokee roll of 1880 in its stead, and the Cherokees to consent to an increase of the amount decreed by the Court of Claims from $900,000, about, to $1,300,000.

312 (Mr. Hemphill, on the part of the defense, before the above answer was given objected to it upon the ground that it undertook to detail a conversation with a party now deceased. Second, because it undertakes to repeat a conversation which is alleged to have taken place between E. C. Boudinot, now deceased, and Jake Guthrie. Third, because it is incompetent.

Mr. Hemphill further objects to testimony relating to the purposes of the Wallace roll, as the best evidence is the act of Congress or the other authority under which it was taken.)

22 question. Jake Guthrie was the attorney for the Shawnees who had suit against the Cherokees, was he not?

Answer. Yes, sir.

23 question. He was a friend of Robert H. Kern who is the attorney of record for Moses Whitmire, was he not?

Answer. I think so. I have seen them together.

24 question. Do you remember the occasion of your brother's visit to Kansas City?

Answer. In talking about this compromise he said he was looking for a telegram every day to go to Kansas City to meet Kern and other parties interested, whoever they were, to draw up an agreement to make a contract of some kind.

25 question. Did he receive a telegram?

Answer. He did.

26 question. Did you see it?

Answer. Yes, sir.

27 question. Is that telegram in existence?

Answer. I haven't seen it since my brother died; don't know whether it is or not.

28 question. Could you find it?

Answer. Could I find it now? I haven't been able to find it among his papers.

29 question. What were the contents of that telegram?

(Mr. Hemphill for the defense objects.)

Answer. "Can you be at the Midland to-morrow?"

30 question. How was that telegram signed?

Answer. It was signed by J. E. Campbell, I think.

31 question. When your brother returned from Kansas City what report did he make of what he had done in Kansas City?

Answer. He said that they had not made any contract in writing; that it was thought best not to have a written contract on account of the official positions of some of the parties connected, but that a verbal contract had been made under which there would be $50,000 to be divided into six shares in case the compromise was effected.

32 question. Did he tell you who were to get these shares?

Answer. Yes.

33 question. Who were they? State the full names.

Answer. Jake Guthrie, J. E. Campbell, C. J. Harris, S. H. Mayes, W. W. Hastings. Myself and my brother were to get the last share.

34 question. What was this $50,000 to be a payment for?

Answer. I did not know at that time, only that it was to be a payment for effecting the compromise and increasing the payment that was to be made to the freedmen.

35 question. Increasing it by how much?

Answer. By enough to increase the individual payments
313 from $256 to $295 each, but the sum of $400,000 was mentioned as being about the amount it would take to do that.

(Before the above reply of the witness detailing the conversation relating to the telegram and detailing the conversatoin with his brother, Mr. Hemphill for the defense objected to the testimony: First, because the proper proof of the telegram is either the original on file or a copy from the telegraph office. Second, as to the conversations, because it undertakes to detail a conversation with a party now deceased, and because the testimony is incompetent.)

36 question. When was it that your brother died?

Answer. February 20, 1896.

37 question. When was it that he returned from Kansas City and told you these facts?

Answer. In November, 1895, during session of council.

38 question. In accordance with this contract which your brother related to you, was anything done by the parties to it?

Answer. There was a proposition made by the attorney for Whitmire, Robert H. Kern, in writing.

39 question. Have you that proposition?

Answer. Yes; this is a copy of it.

COUNSEL FOR DEFENDANTS:

Question. Where is the original?

Answer. It is on file in the Cherokee executive department, I suppose. That is where it should be.

40 question. Have you seen the original letter?

Answer. Yes, sir.

41 question. And read it?

Answer. Yes, sir.

42 question. And is this a copy of it?

Answer. That is a copy.

COUNSEL FOR PLAINTIFFS: I offer it in evidence, marked for identification "Exhibit T."

(Mr. Hemphill objects to the admission of the copy. Claims that the original should be produced or certified, authenticated copy.)

43 question. Have you compared this with the official records?

Answer. I compared that with the official records here at Washington.

44 question. After that letter was received by the national council what action did the national council take?

Answer. They passed an act authorizing compromise of the suit.

45 question. Have you a copy of that act?

Answer. Yes, sir; this is a copy.

46 question. Have you seen that original act?

Answer. Yes; have read it many times.

47 question. Have you compared this copy with the official records here?

Answer. Yes, sir.

48 question. Is it a true copy?

Answer. Yes.

COUNSEL FOR PLAINTIFFS: I offer that as Plaintiffs' "Exhibit W."

(Mr. Hemphill on the part of the defense objects to the offer of a copy of the act, claiming that the original or certified copy of the records of the Cherokee council should be produced.)

314 49 question. What interest did Robert H. Kern have in this intended appropriation for $400,000?

Answer. You refer to this first act?

50 question. I refer to the appropriation for $400,000 that was to be made by the Cherokee council for the benefit of the Whitmire case.

Answer. When he got up to that point he was to have a third of it, but up to this time there was no appropriation to be made by the

national council. The money was here in the hands of the Secretary of the Interior, and when this law was passed it was to authorize the agent of the Cherokees to consent for the Court of Claims to increase its decree from $903,000 to the amount $1,300,000, and there was no further appropriation to be made by the national council.

51 question. After this act (Plaintiffs' Exhibit W) was passed, did the Court of Claims enter a decree in accordance with it?

Answer. No, sir; it did not.

52 question. After the Court of Claims refused to enter a decree in accordance with that act, what did the parties to the suit next do?

Answer. They made new agreements by which to effect the compromise at home.

53 question. Have you a copy of those agreements?

Answer. Yes, sir.

54 question. What interest, if any, did Robert H. Kern have in the $400,000 provided by these new agreements?

Answer. One-third.

55 question. Have you a copy of the contract setting forth that interest?

Answer. Yes, sir; this is a copy (producing paper).

56 question. Have you seen that original agreement?

Answer. Yes.

57 question. And read it?

Answer. Yes.

58 question. Have you compared this copy with the official records here?

Answer. I have.

59 question. And is it a true copy?

Answer. True copy.

(Plaintiffs' counsel offers the paper as Plaintiffs' Exhibit V.

Counsel for defense objects to this introduction of the copy and claims that they should produce the original or a certified copy of it from the office where the original is kept.)

60 question. What steps, if any, did Kern take to have that $400,000 appropriated?

Answer. At a called session of the national council of March, 1896, he came to Tahlequah and stayed there until the appropriation was made.

61 question. What did you do with regard to your interest in the secret contract?

Answer. Up to the time of my brother's death I hadn't spoken a word to anybody in the world about my interest in this business, or about the business at all, except to my brother. A day or two after he died I wrote to J. E. Campbell, being acquainted with him at the time better than the others, and told him of the interest I had in it and what I knew about it; that I expected him to keep faith, and

he answered and said that he would; that my brother's widow
315 would be protected. And he came down, or all of these parties came to the called session.

62 question. What parties?

Answer. Campbell, Guthrie, Kern, Harris, Hastings, and Mayes.

63 question. Where did you see Kern?

Answer. I saw Kern on the street a few times. I didn't meet him personally until I saw him at the hotel.

64 question. What occasioned you to see him at the hotel?

Answer. Well, when the council first met I went to Campbell at the National hotel and had a talk with him about this agreement, secret agreement, and told him that I expected the agreement to be carried out as it was made to my brother; that I was interested with him as partner in law.

65 question. What did he say?

Answer. Hs said that since the compromise had failed here that everything was off

66 question. What do you mean by "here"?

Answer. In Washington.

67 question. And then what did he say?

Answer. They were starting out on a new basis, and he repeated what he said in the letter, that my brother's widow would be protected and that he would see all the other parties, and if he needed me he would let me know.

68 question. When did you next hear from these people?

Answer. A few days before this bill passed. Late in the evening a messenger came for me and told me I was wanted at the National hotel. I went down and found Kern—Robert H. Kern, Jake Guthrie, and J. E. Campbell. They were in Kern's room at the National hotel.

69 question. What was the conversation about there?

Answer. Campbell had a draft of a bill. He said he had called me down as he said he would if he needed me, and the time had come when he needed me, and he showed me a draft of a bill, an act which he said they wanted the committee to report to the national council in the exact words it contained.

70 question. What did he say about your compensation?

Answer. Well, after I had agreed to guarantee to get the bill reported he asked me what it was worth and I told him if they would carry out the original agreement I would be satisfied.

71 question. What political position did you have at this time?

Answer. None, I think.

72 question. What did you do with the draft of the bill that they gave you?

Answer. When they first gave it to me I said I would have to take it for two hours and see what it was. I noted several changes in it and took it back and told them if they would consent to the changes I would guarantee to have it reported. Campell said he didn't know about that, and he called Kern, and after some objections Kern finally consented. He said he had spent a great

deal of time preparing the bill and he wanted it to go in just as it was. The next morning I took the bill down to my office and met the members of the committee.

73 question. What committee?

Answer. The committee who had this matter in charge from the national council.

74 question. While you were there who came to the office?

316 Answer. Campbell, Hastings, and Kern. Campbell and Kern went to my office with me from the National hotel.

75 question. Was your father present?

Answer. He was there.

76 question. What political position did your father have?

Answer. He was clerk of that committee.

77 question. He was clerk of the committee having in charge the preparation of this bill?

Answer. Yes.

78 question. After you and Kern got there what did Hastings say after he came in?

Answer. Hastings came in and told Kern to go back to the hotel and stay there.

79 question. Did he say why?

Answer. He said his presence there might arouse suspicion.

80 question. After this meeting in your office what did you do to get this bill passed?

Answer. During the council, you mean?

81 question. Generally what did you do in order to push the bill through?

Answer. I didn't do anything after the meeting in the office. All that I promised to do, and did do, was to get that bill before the committee and they to agree to report it as it was.

82 question. You turned it over to your father and the rest of the committee?

Answer. Yes, sir; and Hastings. I am sure that they had engaged Hastings to assist them in the preparation.

83 question. Was the bill passed?

Answer. Yes, sir.

84 question. Have you read over the original bill?

Answer. Yes.

85 question. Are you familiar with it?

Answer. Yes; very.

86 question. Have you a copy of it?

Answer. Yes (producing paper).

87 question. Have you compared it with the records here?

Answer. Yes.

(Plaintiffs' counsel offers the copy as Exhibit W.

Mr. Hemphill objects to the copy, and claims that the original or a certified copy from the keeper of the original should be produced, and he further objects that all of the testimony of this witness is irrelevant and incompetent.)

88 question. This bill is dated as having passed the senate March 24, 1896. Prior to this the decree of the Court of Claims in the Whitmire case was filed, was it not?

Answer. On February 3, 1896.

(Offered in evidence as Plaintiffs' Exhibit X.)

89 question. After this bill was passed did Mr. Kern receive anything by reason of that act (Plaintiffs' Exhibit W) and his contract with Whitmire (Plaintiffs' Exhibit V)?

Answer. Yes; he received $126,666.

90 question. Did he give a receipt for it?

Answer. Yes.

91 question. Have you seen that receipt?

317 Answer. Yes.

92 question. Have you a copy of it?

Answer. Yes (producing paper).

93 question. Have you compared it with the official records here?

Answer. Yes.

94 question. Is it a true copy?

Answer. True copy.

(Offered in evidence as Plaintiffs' Exhibit Y.
Defendants' counsel objects to that as being a copy.)

95 question. Did D. W. Lipe, treasurer of the Cherokee nation, ever account for the money received by him to be disbursed in accordance with this act?

Answer. Yes; he made a report to the national council and a statement.

96 question. Have you seen that statement?

Answer. Yes.

97 question. Have you a copy of it?

Answer. Yes (producing paper).

98 question. Have you compared it with the official records here?

Answer. Yes.

99 question. Is this a true and genuine copy.

Answer. True copy.

PLAINTIFFS' COUNSEL: I offer it in evidence as Plaintiffs' Exhibit Z.

(Mr. Hemphill makes the same objection to this copy as made to the other copies of papers heretofore.)

100 question. Do you know R. M. Wolff, a member of the Cherokee senate?

Answer. Yes, sir.

101 question. Did you have a certain conversation with him with regard to the passing of this bill?

Answer. I did; had several.

102 question. State the place, the time, and the substance of these conversations.

Answer. That was after the passage of the bill in April, 1896, and

after that in our office—he was a partner of mine. We entered into a partnership to practice law.

103 question. In what town?

Answer. In Tahlequah.

104 question. State your conversations.

Answer. Among other things—I don't know the whole conversation, but in speaking about this compromise he said that he had gotten $2,000 or $2,500 out of it; that they wanted him to take a contingent fee, and he wouldn't do it. He made them pay him in advance. I saw him with fifteen $100 bills at one time, and he said that was what it was; that was part of it.

105 question. What was the public report with regard to the passing of this bill?

Answer. That it had been bought through.

(Defendant objects to that as incompetent.)

106 question. Was any resolution passed by the Cherokee council on the subject of that report?

Answer. Yes, sir; council in the fall of 1897.

107 question. Have you read that resolution?

318 Answer. Yes, sir.

108 question. Have you a copy of it?

Answer. Yes, sir.

109 question. Have you compared that copy with the official records here?

Answer. I have.

(Plaintiffs' counsel offers the resolution in evidence as Plaintiffs' Exhibit AA.

Mr. Hemphill makes same objection as to the other copies of papers.)

110 question. After this last bill (Plaintiffs' Exhibit W) was passed, what was done with regard to appointing commissioners for the purpose of enrolling citizens?

Answer. There were three commissioners appointed.

111 question. What was their duty?

Answer. Their duty was to make a corrected roll of freedmen citizens of the Cherokee nation.

112 question. What was that roll called?

Answer. It is known as the Clifton roll.

113 question. Where is it?

Answer. It is on file here in the Interior Department and in the treasurer's office, Cherokee nation.

114 question. Have you seen that roll?

Answer. Yes, sir.

115 question. And read it?

Answer. Yes, sir.

116 question. How many duplicates appear on the face of that roll, if any?

Answer. One hundred and fifteen, that I know of.

117 question. How many appear on it that are not citizens?

Answer. It is estimated that there are a thousand. There are 4,552 names on the roll.

118 question. It appears from these exhibits that are filed here today that this compromise was for the purpose of evading the Wallace roll, the idea being that the Wallace roll contained more names than there were citizens. Now state, if you know, how many names there actually are upon that Wallace roll.

Answer. On the Wallace roll there are less than 3,500.

119 question. How many more names appear on the Clifton roll than were on the Wallace roll?

Answer. More than 1,100.

The said witness was then cross-examined by the counsel for defendants, and, in answer to interrogatories, testified as follows:

1 cross-question. Give the names of the parties in this agreement. State whether they are living or dead, and if living, what their present address is.

Answer. Jake Guthrie, Coffeeville, Kans., living; J. E. Campbell, Alluwe, Ind. T., living; C. J. Harris, Tahlequah, Ind. T., living; W. W. Hastings, living at Tahlequah, Ind. T.; S. H. Mayes, chief at Tahlequah, Ind. T.—his home is Pryor Creek, Ind. T. Our firm was the sixth. My post-office address is Fort Gibson, Ind. T.

2 cross-question. State whether any of these other parties received any money out of this fund of $400,000.

Answer. I didn't see them get any. I couldn't say.
319 Hastings and Campbell were the only two of these parties that told me they got any. I didn't ask the others.

3 cross-question. Did they say how much they had gotten?

Answer. No, sir.

4 cross-question. Did you get any out of it?

Answer. In August, 1896, Hastings paid me $1,600.

5 cross-question. Any other?

Answer. That's all I got.

6 cross-question. Did your brother's widow get any?

Answer. Hastings told me at that time that he had $2,400 for her, and I understand she got it; she told me she did.

7 cross-question. Do you know about any of the others?

Answer. No, sir; I don't.

8 cross-question. What was the result of this investigation under the resolution of the council?

Answer. They didn't get through investigating. Council expired by limitation. They asked the chief by resolution to continue the session so they might complete their work. He refused to do it.

9 cross-question. Did the Court of Claims enter a judgment for $900,000?

Answer. $903,000 and some odd dollars.

10 cross-question. In what case?

Answer. In the case of Moses Whitmire *v.* The Cherokee Nation and The United States—the Freedmen case.

11 cross-question. That was in behalf of the freedmen claiming to be citizens, was it?

Answer. Yes, sir.

12 cross-question. Who was Wolff?

Answer. R. M. Wolff. He is a Cherokee. He was clerk of the senate.

13 cross-question. Where does he live?

Answer. His post-office address is Tahlequah, Ind. T.

14 cross-question. How do you know there are 115 duplicates on the Clifton roll?

Answer. I have been the clerk of the joint committee to settle with the treasurer for the last two years and I have made an exhaustive examination of it under the direction of the committee.

15 cross-question. Did you examine the parties themselves, or simply go over the roll and see that there was an identity of names?

Answer. They were found, some of them, by the treasurer in making payments; others I have examined since then personally. How I happened to do that, the treasurer told me if I would get lawful power of attorney he would pay claims to me—if I had power of attorney from an unpaid beneficiary. I corresponded with forty or fifty different ones, sometimes two or three in a family, and they all told me they had been paid.

16 cross-question. Did you hold out 115 of them yourself?

Answer. I took that number off the roll; yes, sir—115 duplicates.

17 cross-question. Did you ascertain that by personal investigation?

Answer. By personal investigation of the roll and of the records.

18 cross-question. How many parties did you see personally?

Answer. I didn't see to talk with more than a dozen, I don't suppose. I had the post-office addresses of the others and I wrote to them. This entire 115 I found in the treasurer's office. The
320 roll showed duplicate names and the treasurer's record showed that they were the same persons.

19 cross-question. Do you know that it showed that they were the same persons?

Answer. The treasurer had made the investigation as he was making the payments.

20 cross-question. Do you mean he told you that?

Answer. He had it down on his books, yes; and the roll showed names of freedmen of certain age, of certain residence, and members of certain families had been enrolled again at another place and another number. I found several names on that roll of apparently fictitious persons, and after asking everybody who knew anything about it, I could not find anyone living in the Cherokee nation who knew them or ever had known them. The family I have particularly in mind is that of William Grimmet, who had five children apparently enrolled in Tahlequah district.

By the COMMISSIONER:

Question. Do you know of any other matter relative to the claim in question?

Answer. No, sir.

FRANK J. BOUDINOT.

I, E. S. Rockwell, a commissioner of the Court of Claims, in and for the District of Columbia, certify that at the time and place aforesaid, Frank J. Boudinot, witness on behalf of the plaintiffs in the above-entitled cause, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and that the answers were taken down in my presence and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 19th day of April, 1899.

[SEAL.] ERASTUS S. ROCKWELL,
Commissioner Court of Claims.

EXHIBIT W, 4/19/99.

An act to appropriate and pay certain moneys out of moneys arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee nation.

Whereas by virtue of an agreement made and entered into between the Cherokee nation and the Secretary of the Interior of the United States on or about the 17th day of May, 1893, the sum of $1,660,000, with accrued interest, was allowed to remain in the Treasury of the United States, the same being a portion of the money due the Cherokee nation from the United States on account of the purchase of the Cherokee Outlet, to answer any claim that might be established in the Court of Claims, of the United States in favor of the Delawares, Shawnees, and freedmen in suits then pending in said court in their behalf against the Cherokee nation, which sum on March 4, 1895, amounted to $1,792,800; and

Whereas the said Court of Claims in the said suit decided
321 that each of said parties was entitled to recover of the Cherokee nation, $256.64, and in the case of Moses Whitmire, trustee for said freedmen, against the Cherokee Nation *et al.*, did decree on May 8, 1895, that he was entitled to recover of the Cherokee nation the sum of $903,365, and that what is known as the Wallace roll was binding on the Cherokee nation; and

Whereas the Cherokee nation in the distribution of the several sums complained of in said suits, had paid each Cherokee the sum of $295.35 each; and

Whereas the Cherokee national council did, on December 7, 1895, enact a law agreeing that the nation, in consideration of said Moses

Whitmire, as trustee of said freedmen, agreeing that in said cause the decree entered of date May 8, 1895, should be so modified as to strike therefrom the provision making the Wallace roll binding on the Cherokee nation and agreeing that a number of freedmen entitled to share in the last-named sum would consent to increase the judgment so entered from the sum of $903,365 to the sum of $1,300,000, and did appoint E. C. Boudinot to carry out the provisions of said act; and

Whereas said E. C. Boudinot and R. H. Kern, attorney for Whitmire, did petition said court to modify said decree; and

Whereas said court refused to so modify said decree and held the Wallace roll binding on the nation, and declared that increase of $400,000 to equalize the freedmen with the Cherokee in the payments made to the Cherokees was properly the duty of the Cherokee national council; and

Whereas all parties to this litigation were desirous that it should end; and

Whereas the Cherokee nation was willing that each freedman should be paid same sum as each Cherokee had been paid, to wit, the sum of $295.35, and that the spirit of the said act of the national council should be carried into effect, it was agreed between Samuel H. Mayes, principal chief, C. J. Harris, G. W. Benge, Roach Young, and Joseph Smallwood, the Cherokee delegation, and E. C. Boudinot, all acting for the Cherokee nation, and Moses Whitmire, trustee, and R. H. Kern, his attorney, acting for the freedmen, that if the said principal chief would call a special session of the Cherokee national council, and recommend that it appropriate the sum of $400,000 to equalize said freedmen with the Cherokees, that said Whitmire and Kern would recommend to the Court of Claims that the decree be so modified as to strike from it the binding force of the Wallace roll on the nation and allow that the number of freedmen entitled to share under said decree should be ascertained by a commission of three persons.

The agreement between E. C. Boudinot and R. H. Kern above stated reads as follows:

"This agreement, made and entered into this 28th day of January, A. D. 1896, by and between E. C. Boudinot, acting as the duly authorized attorney of the Cherokee nation, for the purpose of settling the suit of Moses Whitmire, trustee for the freedmen of the Cherokee nation, *v.* The Cherokee Nation and The United States, in the Court of Claims, at Washington, D. C., and Robert H. Kern, acting as attorney for said Whitmire, witnesseth:

"That the said Robert H. Kern hereby agrees with said Boudinot to obtain the consent of said trustee and said Court of Claims that
322 the provision in the decree therein making the Wallace roll binding on the Cherokee nation shall be stricken therefrom, and in lieu thereof a provision inserted providing that the identity of the number of freedmen mentioned in said decree shall be ascertained by a commission approved by said court, and that

the said Boudinot agrees with said Kern, in consideration of having this done, to have the principal chief of the Cherokee nation call together the national council thereof in special session, and within a reasonable time, and to have said national council so convened appropriate such sums of money as may be needed in excess of the amount decreed to be due the freedmen in the above cause as may be necessary to equalize the said freedmen in the amount the Cherokees have paid themselves each in the three payments complained of in the said suit, but not in excess of $400,000; it being understood that if the said calling of the council and appropriation by it of said sum shall fail, then the provision striking from said decree the Wallace roll shall be set aside, and the decree shall remain in force as it now is.

"In testimony hereof we have hereunto set our hands, day and date first hereinbefore written.

"R. H. KERN,
"*Attorney for Freedmen.*
"E. C. BOUDINOT,
"*Attorney for Cherokee Nation.*"

And the agreement between said Mayes and the Cherokee delegation and R. H. Kern, reading as follows:

"This agreement, made and entered into this 28th day of January, A. D. 1896, by and between Samuel Mayes, principal chief of the Cherokee nation, acting in and for its behalf, and Robert H. Kern, attorney for Moses Whitmire, trustee of the freedmen of the Cherokee nation, acting for and in his and their behalf, witnesseth:

"That whereas the Court of Claims of the United States has refused to approve and enforce the compromise of the suit pending therein, wherein Moses Whitmire, trustee of the freedmen of the Cherokee nation, is plaintiff and The Cherokee Nation and The United States are defendants. Now, for the purpose of ending said litigation and securing the object of said proposed compromise as provided for in an act of the national council approved December 7, 1895, the parties to this agreement stipulate as follows: That said Samuel Mayes, as said principal chief, agrees that within a reasonable time to call together the national council of the Cherokee nation in an extra session, and to recommend it to appropriate such sums of money as shall be needed to equalize the freedmen with the Cherokees in the payment of the three funds that are mentioned in the pleadings and the decree in the case above mentioned; that is to say, such sum in excess of the judgment for $903,254 now standing in said decree in favor of complainants therein, viz, an additional sum of $400,000, as provided in an act of December 7, 1895, with the reservation that all surplus is to be returned to the Cherokee nation. And the said Robert H. Kern agrees to obtain the consent of said Whitmire and the Court of Claims to the striking from said decree of the provision therein making the Wallace roll binding upon the Cherokee nation, and to substitute in lieu thereof a provision that

the number of the freedmen mentioned in said decree shall be determined by a commission approved by said court.

323 "In witness whereof the parties hereunto set their hands the day and date first hereinbefore written.

"S. H. MAYES.
"ROBERT H. KERN.
"MOSES (his x mark) WHITMIRE.

"Witness to Moses Whitmire's signature:
"J. K. MILTON TURNER.
"MARIA L. RICHARDSON.

"We the undersigned duly accredited delegates from the Cherokee nation hereby approve of the above agreement.

"C. J. HARRIS.
"ROACH YOUNG.
"JOSEPH SMALLWOOD.
"G. W. BENGE.

"I, the undersigned, Moses Whitmire, acting as trustee as above stated, approve of the above agreement.

"MOSES (his x mark) WHITMIRE, *Trustee.*

"Witnesses:
"J. MILTON TURNER.
"MARIA L. RICHARDSON."

That in pursuance of said agreement and to carry the same into effect, the said Court of Claims did at the request of said Boudinot and Kern, on February 3, 1896, so modify said decree as to strike therefrom all provision making the Wallace roll binding on the Cherokee nation, and did decree that the number of freedmen entitled to share in said sum of $903,365 should be ascertained by a commission of three persons, one to be appointed by the principal chief of the Cherokee nation, one by said Whitmire, and one by the Secretary of the Interior, and that the Secretary of the Interior should pay said money to said freedmen as they appeared on the roll made by these commissioners and approved by the Secretary of the Interior; but that (to) no one of said freedmen should a sum in excess of $256.34 be paid; and

Whereas there still remains in the Treasury of the United States in excess of the judgment rendered in the Delaware, Shawnee, and freedmen cases, of said sum first mentioned, the sum of $491,155.06.

Now, therefore, for the purpose of carrying out the aforesaid agreement between the said Mayes, Cherokee delegation, and the said Boudinot and the said Whitmire and Kern, and for the purpose of equalizing the freedmen with the Cherokees in the payments to each of them of the same amount as has been paid each Cherokee:

Be it enacted by the national council, That there be, and is hereby, appropriated out of the above fund, to be paid said freedmen, the sum of $400,000, or so much thereof as shall be necessary to carry

this act into effect, which is hereby directed to be paid said freedmen by the treasurer of the Cherokee nation as their names shall appear upon the roll approved by the Secretary of the Interior, as provided in said decree of February 3, 1896, after payment of said money mentioned in said decree shall have been made to them by the Secretary of the Interior; but in no event shall said
324 treasurer of the Cherokee nation pay out of said $400,000 more than in addition to the sum of $903,365, the amount of the judgment in the case of Moses Whitmire, trustee of the freedmen of the Cherokee nation *v.* Cherokee Nation *et al.*, in Court of Claims than will pay each freedman the sum of $295.35. From said sum of $400,000 there shall be deducted the amount said Whitmire, as trustee, contracted to pay his attorney of record in said cause, which shall be paid said attorney by said treasurer out of said fund as soon as the same is available and charged against moneys to be paid to the freedmen. The expense of making said payment by said treasurer shall also be deducted from said fund of $400,000 and likewise charged against said freedmen.

SEC. 2. That the treasurer of the Cherokee nation is hereby authorized, empowered, and directed to request the Secretary of the Interior and the Secretary of the Treasury of the United States to transfer the remainder of the first installment, with accrued interest, of the proceeds of the "Cherokee outlet," set aside by the act of Congress of March 3, 1893, to satisfy the claims of the Delawares, Shawnees, and freedmen after deducting the amount of the judgments obtained in their behalf, to the assistant treasurer of the United States at St. Louis, Mo., to the credit of the Cherokee nation.

Passed the senate March 24th, 1896.

SAMUEL SMITH,
President of Senate.
RICHARD M. WOLFE,
Clerk of Senate.

Concurred in by the council branch of the national council March 26, 1896.

JOHNSON SIMMONS,
Speaker of the Council.
R. W. KING,
Assistant Clerk of Council.

Approved March 27, 1896.

S. H. MAYES,
Principal Chief.

EXHIBIT X, APRIL 19, 1899.

[Court of Claims. No. 17209. (February 3, 1896.) Moses Whitmire, trustee for the freedmen of the Cherokee nation, *v.* The Cherokee Nation and the United States.]

It appearing that since the entry of the decree filed May 8, 1895, the defendant, The Cherokee Nation, has filed motions for a rehearing and new trial, and an application for an appeal from said decree to the Supreme Court, which motions have not been heard and which application for an appeal has not yet been allowed; and it appearing that both parties are desirous of avoiding further litigation and have agreed that if the court shall see fit to modify said decree it will be accepted as final—

Now, on motion by the attorney for the complainant, the defendant consenting thereto, it is ordered that the said decree be vacated and set aside, and that the following decree be entered as the final decree in this case:

325 Court of Claims.

MOSES WHITMIRE, Trustee for the Freedmen of the Cherokee Nation,
v.
THE CHEROKEE NATION and THE UNITED STATES. } No. 17209.

At a sitting of the Court of Claims in the city of Washington, this 3d day of February, 1896,

This cause coming on to be heard upon the amended petition, answer, agreed facts, and arguments submitted by the parties, respectively, and the court having heard the same and considered the just rights in law and equity of the freedmen of the Cherokee nation, including all persons who had been liberated by voluntary act of their owners or by law, and all free colored persons who resided in the Cherokee country at the commencement of the rebellion and resided therein July 19, 1866, or returned thereto within six months thereafter, and their descendants who are settled and incorporated into the Cherokee nation, in pursuance of the authority vested in the court by act of Congress entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes," approved October 1, 1890.

And it appearing to the court that under the provisions of article 9 of the treaty of July 19, 1866, made by and between the Cherokee nation and the United States, the said freedmen, who had been liberated by voluntary act of their former owners or by law, and all free colored persons who resided in the Cherokee country at the

commencement of the rebellion and were residents therein at the date of said treaty, or who had returned thereto within six months of said last-mentioned date, and their descendants, were admitted into and became a part of the Cherokee nation and entitled to equal rights and immunities, and to participate in the Cherokee national funds and common property in the same manner and to the same extent as Cherokee citizens of Cherokee blood.

It further appearing to the court that under and by virtue of an act entitled "An act making appropriations for current and contingent expenses, and for fulfilling treaty stipulations with Indian tribes for the fiscal year ending June 30, 1894," approved March 3, 1893, it was provided for the payment to the Cherokee nation of the sum of $8,595,736, the same to be in full consideration of all the right, title, interest, and claim which said nation might have in the lands lying west of 96° west longitude, commonly known as the Cherokee Outlet; and it further appearing that of the said sum $8,595,736 the sum of $295,756 was appropriated by said act out of the Treasury of the United States and made immediately available, and that the balance thereof, to wit, $8,300,000, was made payable in five annual installments, the first to be payable on the 4th day of March, 1895, and all deferred payments to bear interest at the rate of 4 per centum per annum, and that a sufficient amount of the money provided in said act should be paid for the purchase of said Cherokee Outlet to pay the Delawares and Shawnees their *pro rata* share of said Outlet, should remain in the Treasury of the United States until the status of said Delaware and Shawnee Indians should be determined by the courts of the United States before which
326 their suits were then pending; also a sufficient amount to pay the freedmen, who are Cherokee citizens, as the same shall be determined by the courts; and the said act further providing that if the legislative council of the Cherokee nation should deem it more advantageous to their people they might issue a loan for the principal and interest of the deferred payments, pledging said amounts of interest and principal to secure payment of such debt; and it appearing to the court that said Cherokee nation has borrowed from the Union Trust Company of New York the sum of $6,640,000, and pledged as security therefor the four payments as aforesaid, falling due after the 4th day of March, 1895, and that the payment falling due on the said 4th day of March, 1895, amounting to $1,660,000, has been retained in the Treasury of the United States from which to pay the Delawares, Shawnees, and freedmen, as hereinbefore set forth; and it further appearing to the court that the said $6,640,000, so borrowed by the Cherokee nation, has been distributed to the Cherokee citizens of Cherokee blood, to the exclusion of the complainants, the aforesaid freedmen and free colored persons and their descendants, as well as the two funds of $300,000, each distributed by the act of the Cherokee council, of date of April 26, 1886, and November 25, 1890, as charged in the amended petition in this case—

It is ordered, adjudged, and decreed that so much of the acts of

the Cherokee national council of date April 26, 1886, November 25 1890, and May 3, 1894, as restricts the distribution of funds which were derived from the public domain and from the sale of lands by the Cherokee nation to the Government of the United States to citizens of the nation by blood be held and decreed void and contrary to and in derogation of the constitution of the Cherokee nation and the provisions and stipulations of article 9 of the aforesaid treaty of July 19, 1866, with respect to the rights of said freedmen who had been liberated by voluntary act of their former owners or by law, and all free colored persons who resided in the Cherokee country at the commencement of the rebellion and who on the said date resided therein, or who returned thereto within six months thereafter, and their descendants; and that the said Cherokee nation or its trustees, the United States, account for, render, and pay to the aforesaid freedmen and free colored persons and their descendants, out of any funds of the said nation in its national treasury, or in the custody of the United States as trustee, or held by agreement between said nation and the United States for the purpose of satisfying the decree herein rendered, not specifically appropriated by law to other purposes, or out of funds which may hereafter come to the possession of said trustee belonging to the Cherokee nation, a sum equal to the aggregate amount which said freedmen and free colored persons and their descendants would have received if the before-mentioned void and unconstitutional restrictions in said statutes had not existed.

And it is further adjudged and decreed that the complainants in this suit and those whom they represent, being the freedmen and free colored persons aforesaid and their descendants living and in being on the 3d day of May, 1894, are entitled to participate hereafter in the common property of the Cherokee nation in the same manner and to the same extent as Cherokee citizens of Cherokee blood or parentage may be entitled, and that in the distribution of the proceeds and avails of the public domain or common property of the nation among the citizens thereof by distribution *per capita* at any time hereafter, the defendant, The Cherokee Nation,
327 and the defendant, The United States, as trustee of the Cherokee nation, be enjoined and prohibited from making any discrimination between the Cherokee citizens of Cherokee blood or parentage and Cherokee citizens who are or were freedmen who had been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the Cherokee country at the commencement of the rebellion and were residents therein at the date of said treaty, or who returned thereto within six months thereafter, and their descendants, to the prejudice of the latter.

It being understood that the freedmen and their descendants and free colored persons above referred to shall include only such persons of said class as have not forfeited or abjured their citizenship of said Cherokee nation at the date of the entering of this decree.

And it is further adjudged and decreed, with respect to the participation of said freedmen and free colored persons aforesaid and

their descendants in the three funds referred to in the three statutes of the Cherokee nation hereinbefore declared to be void and unconstitutional, that the Cherokees by blood having received a sum which amounts at the date hereof to $7,240,000, in which the said freedmen and free colored persons aforesaid and their descendants were entitled to have and participate in the distribution of said sum; and for the purpose of fixing an amount thereof which ought to be distributed among said freedmen and free colored persons and their descendants, it is further adjudged and decreed that said freedmen and free colored persons and their descendants are entitled to have and receive the sum of $903,365 out of the sum last aforesaid, after deducting the amounts hereinafter allowed and decreed to be paid to the trustee herein as his compensation for services as trustee and the attorney of record of the complainant herein, and the other expenses incident to the ascertainment and payment of the complainants, the freedmen, as hereinafter provided, such balance remaining to be paid by the Secretary of the Interior to the freedmen and free colored persons aforesaid and their descendants, *per capita*, who would have been entitled to receive the same if the unconstitutional restrictions and discriminations in said statutes had not existed. Such payments to be made upon a roll of said freedmen and free colored persons and their descendants as prepared and approved by the Secretary of the Interior, in accordance with provisions hereinafter set forth in this decree.

And it is further ordered and adjudged that, for the purpose of ascertaining and determining who are the individual freedmen of the Cherokee nation now entitled to share in the distribution of the said sum of $903,365, the Secretary of the Interior be authorized to appoint three commissioners, one on the nomination of the complainant and one on the nomination of the defendant, The Cherokee Nation, but both nominations to be approved by him, to proceed to the Cherokee country and hear the testimony both for and against the identity of all freedmen, free colored persons, and their descendants, claiming to be entitled to share in the distribution of said $903,365, that may be offered by the respective parties to this suit; and that each of said parties shall be entitled to be represented before said commissioners, either at the taking of testimony in the Cherokee country or elsewhere; and that the said commissioners, in ascertaining the identity of the freedmen entitled to share under this decree, shall accept what is known as the authenticated Cherokee roll, the same now being on file in the office of the Secretary of the Interior, having been furnished to him and purport-
328 ing to have been taken by the Cherokee nation in 1880 for the purpose of showing the number of freedmen then entitled to citizenship in the said nation under the terms of the treaty between the United States and the Cherokee nation hereinbefore referred to, and their descendants; and the said commissioners shall ascertain who of said persons named on said roll were alive and what descendants of said persons were alive on May 3, 1894, and no evidence shall be accepted by said commission tending to disprove

the citizenship of any of the persons whose names appear upon said roll.

And it is further ordered and directed that when the foregoing roll so reported by the said commissioners shall be approved by the Secretary of the Interior, he will cause the amount remaining of the fund of $903,365, after deducting the cost and expenses herein directed to be paid by the complainants, to be paid and distributed to the persons entitled thereto, such payments, however, not to exceed $256.34 *per capita*, and the cost of distribution and payment likwise being a charge upon the fund of the complainants so to be distributed, pursuant to the act of March 2, 1895, section 11.

And it is further directed that the amount of $6,500, or so much thereof as may be necessary, is hereby allowed for the compensation of the said commissioners and the necessary costs and expenses incidental to the ascertainment of the individual complainants by them as hereinbefore provided; and it is hereby adjudged that one-half of such compensation and expenses shall be paid by the complainants and deducted from the recovery in this suit, and that the remaining one-half part of such compensation and expenses shall be paid by the defendant, The Cherokee Nation, in addition to the costs hereinafter adjudged against the said defendant. And the Secretary of the Interior is authorized to fix the compensation of said commissioners and to advance for the necessary and immediate expenses of making the rolls as hereinbefore provided such amount as he may deem advisable.

There is further adjudged and decreed to Robert H. Kern, the attorney of record for complainant, for compensation and counsel fees, including the compensation of all associate counsel and the expenses and disbursements incident to the litigation, 2 per cent. of the amount of the recovery, to wit, $18,067.30, which amount it is adjudged shall be paid by the Secretary of the Treasury of the United States to the said Robert H. Kern, out of the funds hereinbefore mentioned, now in his hands, and that the same when so paid shall be charged to the defendant, The Cherokee Nation.

And there is further decreed and adjudged to the said Robert H. Kern, attorney of record of the complainants, for compensation and counsel fees, including the compensation of all associate counsel and the expenses and disbursements to the litigation, 4 per cent. upon the amount of the recovery, to wit, $36,134, which amount it is adjudged shall be paid by the Secretary of the Treasury of the United States out of the funds hereinbefore mentioned, now in his hands, and shall be a charge against the freedmen of the Cherokee nation, and paid out of the funds hereinbefore awarded to them.

It is further adjudged and decreed that Moses Whitmire, as trustee of the complainants, be allowed for compensation for his services as such, including expenses and disbursements made by him, the sum of $5,000, which amount it is adjudged shall be paid to said trustee by the Secretary of the Treasury of the United States
329 out of the funds hereinbefore mentioned, now in his hands, and shall be a charge against the freedmen of the Cherokee nation, and paid out of the funds hereinbefore awarded to them.

And the complainant having represented that the number of the freedmen entitled to distribution is not less than 3,524, it is further ordered that if said number of persons entitled to distribution shall not equal that number the payments made shall not exceed $256.34 *per capita*, and that the balance of the amount hereby decreed to said plaintiffs and not consumed in the *per capita* payments herein provided for, shall be paid over to the Cherokee nation as other moneys provided for in the agreement between said nation and the Secretary of the Interior, hereinbefore referred to.

It is further adjudged that the Secretary of the Interior pay the aforesaid amount decreed to be paid by him out of the aforesaid funds now in the Treasury Department of the United States.

And it is further ordered, adjudged, and decreed that the defendant, The Cherokee Nation, pay the costs of this suit, as above provided, and that if this judgment and decree be not carried out and satisfied within six months from the date hereof the claimant may apply to this court for such further order, relief, or remedy as the plaintiff herein may deem necessary, and that if any further proceeding be had under this decree the rights of the attorneys and counsel for the plaintiff herein to further costs and allowances be reserved to be hereafter determined and fixed by the court, and the court reserves the right to make all such further orders in aid hereof as to it may seem meet.

It is hereby stipulated and agreed on the part of the complainant and on the part of the defendant, The Cherokee Nation, that the foregoing decree be entered in this case in the place and stead of the decree entered and filed May 8, 1895, in this case; and that it be entered *nunc pro tunc* as of that date, to wit, May 8, 1895; and that the application for an appeal filed by the complainant and the application for an appeal and motions for a rehearing and for a new trial filed by the said defendant be mutually withdrawn upon the entry of this corrected decree.

Dated Washington, February 3d, 1896.

ROBERT H. KERN,
Attorney for the Complainant.
E. C. BOUDINOT,
MAXWELL & CHASE,
Attorneys for the Cherokee Nation.
S. H. MAYES,
Principal Chief of the Cherokee Nation.

The defendants, The United States, offer no objection to the entry of the amended decree as provided in this stipulation.

——— ———,
Assistant Attorney-General.

EXHIBIT Y, APRIL 19, 1899.

TREASURY DEPARTMENT, CHEROKEE NATION,
TAHLEQUAH, IND. T., *August* 15, 1896.

Received of D. W. Lipe, treasurer of the Cherokee nation, as provided by an act of the national council approved March
330 27, 1896, and entitled "An act to appropriate and pay certain moneys arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee nation," the sum of one hundred and twenty-six thousand six hundred and sixty-six dollars, in full of all demands against the Cherokee nation, as per act above referred to and contract hereto attached.

ROBERT H. KERN,
Attorney of Record in Case Moses Whitmire, Trustee of Cherokee Freedmen, v. Cherokee Nation et al., in Court of Claims of the United States.
J. MILTON TURNER,
Per ROBERT H. KERN.

Deposition of Sam Houston Benge, for Claimants, Taken at Washington, D. C., on the 20th Day of October, A. D. 1899.

Claimant's counsel, M. E. Harby; defendants' counsel, John J. Hemphill.

SAM HOUSTON BENGE, having been produced as a witness on behalf of the plaintiffs, was by me sworn before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and said his name is Sam Houston Benge; that his occupation is that of farmer; that he is 67 years of age, and that his place of residence is Fort Gibson, Ind. T.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause, and that he is not related to the plaintiffs, and thereupon said Sam Houston Benge was examined by the counsel for the plaintiffs, and in answer to interrogatories testified as follows:

1 question. Where were you born?
Answer. I was born in the State of Alabama.
2 question. When did you go to the Indian Territory?
Answer. When? 1838.
3 question. Are you a Cherokee?
Answer. Yes, sir.
4 question. Your father and mother were Cherokees?
Answer. My father was a white man; my mother was a Cherokee Indian.
5 question. Have you ever held any political positions in the Indian Territory? If so, please state what they were.

Answer. Well, I have had several. I have been a member of the council.

6 question. In what year was that?

Answer. Well, I can't tell exactly. It has been some thirty years ago. I was elected to that position when I was 23 years old.

7 question. When were you elected to the Cherokee senate?

Answer. I think it was in 1862.

8 question. From the Sequoyah district?

Answer. Yes, sir.

9 question. And you were reelected from the same district in 1865, weren't you?

Answer. Yes, sir.

10 question. Do you remember when you went to Fort Gibson—Illinois district?

Answer. I went to Illinois district in November, 1867.

331 11 question. And have you been elected senator from that district?

Answer. Yes, sir.

12 question. For how long, off and on?

Answer. I can't hardly tell, but I have been elected off and on in that district, and have been in public service for about thirty-five years.

13 question. Were you ever a delegate to Washington?

Answer. Yes, sir.

14 question. Will you please state the first occasion?

Answer. I started from the Cherokee nation in October, 1865, to this place as a delegate from the Cherokee nation.

15 question. As a delegate for what?

Answer. Representing the Cherokee people.

16 question. Do you remember the treaty of 1866 between the Cherokees and the United States?

Answer. Yes, sir.

17 question. What part did you have in that treaty?

Answer. I was one of the signers to it.

18 question. Who was commissioner then?

Answer. Cooley and Elisha Shells was acting with him.

19 question. I wish you would state at whose solicitation that treaty was made. State the facts that led up to it.

Answer. Well, before the war, of course, we had treaties with the Government, but when the Southern Confederacy seceded, the Confederacy compelled our authorities to make a treaty with them, and they treatied.

20 question. How did that lead up to this treaty of 1866?

Answer. Well, when the war ended, we, of course, wanted to have a new treaty with the Government of the United States, so as to place us right on record again. Had to do that in order to nullify the treaty with the Confederate States.

21 question. Who was it that wanted the Cherokee commissions to come here?

Answer. Well, the Cherokee national council was recommended by John Ross, who was chief at that time.

(Defendants' counsel objects to the answers above given relating to the Cherokee nation being compelled to treaty with the Confederate States and to the recommendation of John Ross, the principal chief, on the ground that if Ross made any such recommendation it ought to be in writing produced, and if there was any action taken by the Confederate States Government, that must be produced.)

22 question. After you came to Washington, did you meet with Mr. Cooley?

Answer. Yes, sir.

23 question. Consult with him?

Answer. Yes, sir.

24 question. He was very anxious to have this treaty made, was he not?

Answer. At that time we met together in a room and talked the matter over. That was the way we did, and then we would take a kind of synopsis of what we were doing.

(Defendants' counsel objected to the above question.)

25 question. Did Mr. Cooley say what was the purpose of
332 the United States in making that treaty, one article of which provides for the settlement of the friendly Indians among the Cherokees?

Answer. Well, he contended, you know, and insisted that there should be a clause in there, that the Cherokee people should take all friendly Indians adjacent to the Cherokee nation who wished to become citizens of the Cherokee country, and it was so agreed upon.

26 question. Did he say why they wanted that clause in?

Answer. He said there were a good many of the Indians now outside of the Indian Territory who were homeless and wanted homes.

(Defendants' counsel objects to any statement of the purposes assigned by Mr. Cooley in negotiations leading up to the treaty on the ground that they are incompetent and that the treaty itself is the best evidence of what was done.)

27 question. Mr. Benge, what acquaintance have you had in the Cherokee nation, with what might be called the leading men of the nation?

Answer. You mean, what acquaintance have I had?

28 question. Yes, sir.

Answer. Well, I have been acquainted with pretty nearly all the leading men; we served together as officers of the nation, were senators and representatives of both houses.

29 question. Do you remember when the Delawares and the Cherokees were negotiating with each other for the settlement of the Delawares amongst the Cherokees?

Answer. Yes, sir.

30 question. State what you remember about that.

Answer. Well, I remember that there was a delegation appointed composed of Mr. William P. Ross, who was then chief of the nation; Riley Keyes, Jesse Bushyhead, instructed by the Cherokee council to come to Washington and treaty with the Delaware Indians.

(By DEFENDANTS' COUNSEL:)

31 question. Were those instructions in writing?

Answer. Yes, sir.

(Defendants' counsel objects to any statement as to what these instructions were.)

32 question. Do you remember when the Delaware delegation went to Tahlequah in 1863?

Answer. In what year?

33 question. In 1863.

Answer. 63?

34 question. Yes.

Answer. Now, I won't be positive about dates.

35 question. Do you remember the circumstances?

Answer. I recollect seeing the two Journey-Cakes there. Sarcoxie and one or two others, that I don't recollect their names, composed the delegation of Delaware Indians at Tahlequah.

36 question. Do you remember the purpose of their visit?

Answer. Was to purchase land from the Cherokee people.

37 question. Do you remember when the delegation of Cherokees was sent to Washington to make a treaty with the Delawares?

Answer. Yes, sir.

38 question. Do you remember when the Delaware-Cherokee agreement of 1867, which we cite in our petition, was made?

Answer. Yes, sir.

333 39 question. The ratification of that treaty came up in the Cherokee senate, did it not?

Answer. Yes, sir.

40 question. And you were senator at the time?

Answer. I was.

41 question. Do you remember when this was?

Answer. It was in November, 1867.

42 question. Were you in favor of ratifying that treaty?

Answer. No, sir.

43 question. Why?

Answer. Because it was making sale of some lands which I was opposed to.

44 question. The matter was deliberated upon in the Cherokee senate?

Answer. Yes, sir; some deliberation.

45 question. Did you speak against it?

Answer. I did.

46 question. Can you give me an idea of what you said?

Answer. My objections was the selling of land. I claimed that the delegation was not instructed to sell lands.

47 question. You were not in favor of selling this land?

Answer. No, sir.

48 question. You objected to this treaty because it provided for the sale of lands?

Answer. Yes, sir.

49 question. Did you talk with other senators on this?

Answer. I talked with them and talked with Mr. Ross.

(Before these answers were taken down, defendants' counsel objected; testimony is incompetent because the arguments and reasons assigned by one senator or member of the legislative body is incompetent and can not in any way bear on the results reached by the body.)

50 question. Who was it that persuaded you to vote for the treaty?

Answer. Mr. James McDaniel.

51 question. How long have you known Mr. James McDaniel?

Answer. Well, I have known him for years. We served together in the Union Army. We always were friends. I will just relate how I came to vote for the ratification of that treaty. There is an old tradition among the Indians, who claim that the Delawares was the grandfather of the Cherokee people, and that they had sold out and were homeless still in the State of Kansas, and James McDaniel asked me to withdraw my objection so that we could help these people have homes, which I did, and voted for the ratification of the treaty.

(Defendants' counsel objected to the above answer before taken down because the reasons which influenced this witness in voting for this resolution are of no legal value, and the testimony is entirely incompetent.)

52 question. Did Mr. McDaniel address the senate on the subject of this treaty?

Answer. Yes, sir.

53 question. What did he say about having the Cherokees sell land to the Delawares?

Answer. Well, only what I have said. The Delawares—
334 now that is an old tradition there—that the Delawares was the grandfather of the Cherokee people. I have known that since I was a boy—that is, I have heard it talked about. He just asked the senators to ratify the treaty, so that their grandfathers could get homes in the Indian Territory.

54 question. Did he say that it was right or wrong to sell them this land?

Answer. He didn't say whether it was right or wrong. He just advocated the sale of it, so that those people might have homes.

55 question. Were other senators beside you originally opposed to it?

Answer. Well, no; if they were, they didn't make it known at that time.

56 question. What was the final result of the deliberation by the senate?

Answer. Well, they ratified the treaty.

57 question. Were there any dissenting votes?

Answer. No, sir.

58 question. Did the senate also deliberate on the question of the Delawares having Cherokee rights in addition to this purchase of land?

Answer. Well, the only thing now, so far as the purchase of the land was concerned. There is where the trouble was coming in—selling 160 acres to each individual for $160 in money. That is the number of Delawares who had registered to become citizens of the Cherokee country. In addition to that $160 they were required to pay $180 or $182 to the head to equalize the amount that we had invested here in Washington individually. To each individual it was estimated that there was coming about $182 out of the funds, and the Delawares were required to pay that amount for each of their people.

(Defendants' counsel objected before the above answers were taken down, because it is simply a statement of the construction of the witness upon the written contract and of the reasons which were supposed to have influenced him in acting upon the treaty. These are incompetent testimony and irrelevant.)

59 question. You are aware, Mr. Benge, that the Delaware-Cherokee treaty of 1867 says something about the Cherokee rights going to the Delawares. Was this part of the treaty deliberated upon by the Cherokee senate. I refer to the question of the Delawares having Cherokee rights in addition to the purchase of this land.

Answer. Well, when I stated a while ago that they separated the two questions, so far as the money was concerned—that is, the purchase of 160 acres of land, and then this addition to the money that was invested here. It was all embodied in one in the treaty and they voted upon it at the same time.

(Defendants' counsel objects to the above as being incompetent and irrelevant, and for the additional reason that the journals of the Cherokee senate are the best evidence of how these questions were voted upon.)

60 question. Did any senators object to this specific point, namely, that the Delawares were to have Cherokee rights besides being the owners of this land?

Answer. No, sir; when they ratified this treaty then the registered Delawares became citizens of the Cherokee country, and
335 they obtained from the nation a right which we have, as farmers, a right to our farms, an occupant right and occupant title, which is the best that they could give. We consider that title

equal almost to a title in the United States; that nobody can take our farms from us.

(Before the above answer was taken down defendants' counsel objected upon the ground that it is incompetent and irrelevant, and because the witness undertakes to construe the provisions of the written treaty or contract.)

61 question. This was an addition to that purchase or 160 acres?
Answer. Yes, sir.

62 question. Mr. Ross, who was one of the signers of this treaty, was in the Cherokee senate at the time of the ratification?
Answer. No, sir; he was chief of the nation.

63 question. Mr. Benge, in this treaty of 1867, between the Delawares and Cherokees, this language occurs: "The Cherokees, party of the first part, for and in consideration of certain payments and the fulfillment of certain conditions hereinafter mentioned agree to sell to the Delawares for their occupancy a quantity of land," etc. Now, with regard to those words "for their occupancy" I wish you would explain to me, from your knowledge as a senator and maker of the Cherokee laws, what those words mean, not in this agreement, but generally in the Cherokee Territory when they occur in other agreements?
Answer. Which, the occupancy? Well, as you read there, whatever it is, the consideration of so much they would sell to the Delawares for their occupancy. Occupancy means the title that the Cherokees can give, the only and the best they have.

(Defendants' counsel objected before the above answer was given, upon the ground that this is a construction of a written contract and an attempt to define the meaning of words used therein, which are both incompetent and irrelevant.)

64 question. Mr. Benge, do you understand what the people in the United States mean when they use the words "a title in fee simple"?
Answer. Yes, sir. That is, when they buy a piece of land, they get a title in fee simple for it. They hold it for their individual property.

65 question. What have you in the Indian Territory that corresponds to this, if anything?
Answer. Coming nearer to it, is the occupant's right and title; we consider that as good with us as it is in the United States here with your people. That it is a title fee simple, because the laws of our country protect us in our occupant title, as much so as the laws of the United States protect their people with the fee-simple right.

66 question. Your answer refers to the time when this change was made as well as the present?
Answer. Yes, sir.

(Defendants' counsel objects to the above on the ground that whatever the rights intended to be conveyed by the words used in matter

of legal construction and the testimony of this witness as to what they mean *are* incompetent and irrelevant.)

67 question. Mr. Benge, your principal chief, Mr. Ross, who was one of the signers of this agreement of 1867, was a Cherokee, was he not?

Answer. He was a Cherokee.

68 question. By birth?

Answer. By birth, but he looked like a white man.

336 69 question. What color hair did he have?

Answer. Well, I don't know—his hair was a light color.

70 question. What color was his eyes?

Answer. Blue.

71 question. Do you know whether Mr. Ross was half Indian or less than half Indian?

Answer. Oh, he had but very little Indian blood in him.

72 question. His father was a Scotchman, was he not?

Answer. Yes, sir.

73 question. Was he an educated man?

Answer. Yes, sir; he was a fine lawyer.

74 question. Where was he educated?

Answer. He told me he was educated at Princeton.

75 question. At Princeton university?

Answer. Yes, sir.

76 question. He practiced law down in the Indian Territory?

Answer. Yes, sir.

77 question. Mr. Benge, do you know anything of the custom amongst the citizens of the United States, when they sell land to each other, to guarantee or warranty the possession of that land?

Answer. In the Cherokee country?

78 question. No; in the United States.

Answer. Well, yes.

79 question. Do you know that that is a fact—in our titles we guarantee possession to it, to the man we sell it to?

Answer. Certainly; yes.

80 question. In that agreement of 1867, these words occur: "In case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares to include their improvements according to the legal subdivisions when surveys are made; that is to say, 160 acres for each individual shall be granted to each Delaware." I call your attention to those words "shall be granted." Did you have any conversation with Mr. Ross about those words of guarantee in that treaty?

Answer. Well, no; but as a general thing, in selling, farmers trading their places to one another, we guarantee every sale we make just the same as you do in the States; there is not a bit of difference; we would not take a bill of sale if it was not guaranteed. I have sold several places and have bought several, and there was always a guaranty with it to me or my heirs forever.

The said witness was then cross-examined by counsel for defendants, and, in answer to interrogatories, testified as follows:

1 cross-question. What year was the treaty between the United States and the Cherokees made that you have referred to?

Answer. In 1866, the 19th day of July.

2 cross-question. After full conference between the commissioner, Mr. Cooley, and your delegation, they finally agreed upon that treaty, did they?

Answer. Yes, sir.

3 cross-question. And that was ratified by the Cherokee nation?

Answer. Yes, sir. It was amended by the Senate of the United States first—just a little alteration—and then it was ratified by the Cherokee council.

337 4 cross-question. As it was amended?

Answer. Yes, sir.

5 cross-question. Were you in the council when it was ratified?

Answer. I was in the senate; yes, sir.

6 cross-question. And you voted for it?

Answer. Yes, sir.

7 cross-question. Were there any objections made to it at that time? Were there being votes cast against it?

Answer. In the Cherokee council? No, sir.

8 cross-question. When you speak of the Cherokee council, you include both house and senate?

Answer. Both houses, just as you would say the Congress of the United States.

9 cross-question. The treaty between the Delawares and Cherokees was prepared by delegations from both nations, was it?

Answer. Yes, sir.

10 cross-question. Where was that treaty made?

Answer. It was made here in Washington.

11 cross-question. In Washington; that was subsequently ratified by the Cherokee council?

Answer. Yes, sir.

12 cross-question. Were you one of the delegates from the Cherokee nation at that time?

Answer. No, sir.

13 cross-question. [illegible] you a member of the senate at the time it was ratified?

Answer. Yes, sir.

14 cross-question. It was unanimously ratified by the council?

Answer. Yes, sir.

15 cross-question. By the senate? What about the house?

Answer. The house don't act upon it. I think at that time—I think there was a general meeting of the full council, and I want to make a correction of one thing. You asked me while ago in regard to the ratification of the treaty in 1866 by the national council. I want to state that the amendments to the treaty of 1866 by the Senate of the United States so changed things that we had to amend the

constitution of the Cherokee nation to corroborate, or whatever you might call it, to the treaty.

16 cross-question. That is, to coincide with it.

Answer. Yes, sir; a convention was called of the people of the Cherokee nation to vote upon an amendment of the constitution to coincide with the treaty of 1866.

17 cross-question. The lands of the Cherokees belong to the nation?

Answer. Belong to the Cherokee people in common, I should say.

Question by the notary. Do you know of any other matter relative to the claim in question?

Answer. No, sir.

SAM HOUSTON BENGE.

I, Harry H. Hollander, a notary public in and for the District of Columbia, certify that at the time and place aforesaid, Sam Houston Benge, witness on behalf of the plaintiff, in the above-entitled cause, was by me sworn before any questions were put to him to tell the truth, the whole truth, and nothing but the truth relative to
338 the said cause, and that the answers were taken down in my presence, and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof, I have hereunto set my hand and official seal this 21st day of October, 1899.

[SEAL.] HARRY H. HOLLANDER.

Deposition of Horace M. Adams, for Claimants, Taken at Washington, D. C., and Muscogee, Ind. T., on the 22d Day of March and the 29th Day of December, A. D. 1900, and the 19th Day of February, 1901, Respectively.

Claimants' counsel, M. E. Harby and Kenneth S. Murchison; defendants' counsel, John J. Hemphill and William T. Hutchings.

HORACE M. ADAMS, having been produced as a witness on behalf of the plaintiffs, was by me sworn before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and said his name is Horace M. Adams; that his occupation is that of a farmer; that he is 34 years of age, his place of residence is Chelsea, Ind. T., and that he is one of the plaintiffs in this action and is the brother of Richard C. Adams, one of the plaintiffs mentioned in this action.

And thereupon said Horace M. Adams was examined by the counsel for the plaintiffs, and in answer to interrogatories, testified as follows:

1 question. Mr. Adams, you are a Delaware?

Answer. Yes, sir.

2 question. And a citizen of the Cherokee nation?

Answer. Yes, sir.

3 question. Have you examined personally the land in possession of the Delaware Indians and occupied by them in the Indian Territory to any extent?

Answer. Yes, sir.

4 question. At the present time how many acres, to your knowledge, are occupied by the Delaware Indians in Indian Territory?

Answer. 42,713.23.

5 question. Do you know Cyrus Washington?

Answer. Yes, sir.

6 question. Is he a Delaware?

Answer. Yes, sir.

7 question. Does he live in Indian Territory?

Answer. Yes, sir.

8 question. Does he occupy land there?

Answer. Yes, sir.

9 question. Is the land improved?

Answer. Part of it is.

10 question. Have you seen that land?

Answer. Yes, sir.

11 question. Can you say where on the map of the Indian Territory that land is situated?

Answer. Yes, sir.

12 question. Where is it?

Answer. It is in township 25 north, range 19 east of Indian meridian; the south half of section 29; the north half of northwest quarter of section 32, and northwest quarter of northeast quarter of section 32.

339 13 question. How many acres does that comprise?

Answer. Four hundred and forty acres.

14 question. I show you a map entitled "Township No. 25, range No. 19 E., Ind. mer." Is this land of Cyrus Washington set out on this map?

Answer. Yes, sir.

15 question. Describe how it is set out.

Answer. In the plat painted red.

16 question. Do you know John Secondyne?

Answer. Yes, sir.

17 question. Is he a Delaware?

Answer. Yes, sir.

18 question. Residing in the Indian Territory?

Answer. Yes, sir.

19 question. Does he occupy any land there?

Answer. Yes, sir.

20 question. Have you been on his place?

Answer. Yes, sir.

21 question. State what you know of the land occupied by John Secondyne.

Answer. I went on the land of John Secondyne, and he showed me the metes and boundaries of his land, which I have painted on a map here in yellow.

22 question. Is the map you refer to entitled "Township No. 25, range No. 19 E., Ind. mer."?

Answer. Yes, sir.

23 question. How many acres does John Secondyne occupy?

Answer. Four hundred and forty acres.

24 question. Does he live on this place?

Answer. Yes, sir.

25 question. Has he improved it?

Answer. Yes, sir.

26 question. Did you go over the metes and bounds of that place?

Answer. Yes, sir.

27 question. Is it accurately set out on this map?

Answer. Yes, sir.

28 question. Please describe, as you described the property of Washington, just what the property of Secondyne is by metes and bounds.

Answer. It is the south half of section 32, and the south half of the northeast quarter of section 32, and the northeast quarter of the northeast quarter of section 32; all in township 25, range 19 east, Indian meridian.

(Said map is offered in evidence, township No. 25, range 19 east, Indian meridian, containing the property of Cyrus Washington and John Secondyne, marked "Plaintiffs' Exhibit BB.")

29 question. In what color is the land of John Secondyne set forth?

Answer. In yellow.

30 question. Do you know the family of Cyrus Washington?

Answer. Yes, sir.

31 question. Has he got a wife?

Answer. Yes, sir.

32 question. Any children?

Answer. Yes, sir.

33 question. How many children?

340 Answer. I don't know how many children; he has several.

34 question. What do you mean by several; more than what number?

Answer. More than two.

35 question. He has more than two children?

Answer. Yes, sir.

36 question. Do you know how many children John Secondyne has?

Answer. No, sir.

37 question. Has he got a wife?

Answer. No, sir; his wife is dead.

38 question. Are there any members of his family living with him?

Answer. Yes, sir.

39 question. How many?

Answer. I don't know how many he has; I understand he has five or six children.

40 question. Did you see any of his children?

Answer. Yes, sir.

41 question. How many have you seen at a time?

Answer. I do not remember.

42 question. Have you seen two—three?

Answer. Yes; I have seen two or three at a time.

43 question. Do you know Louis Shawnee?

Answer. Yes, sir.

44 question. Is he a Delaware?

Answer. Yes, sir.

45 question. Living in the Cherokee nation?

Answer. Yes, sir.

46 question. Have you been on his property?

Answer. Yes, sir.

47 question. Have you examined it?

Answer. Yes, sir.

48 question. State where he lives, and just what examination you made of his property, and how many acres it is.

Answer. He occupies two pieces of land; one piece is in township 24, range 19 east, Indian meridian. It is the west half of the southwest quarter of section 6.

49 question. I show you a map marked "Township No. 24, range No. 19 E. of Ind. mer." and ask you if this is a correct map of the property you have just described?

Answer. Yes, sir.

(Said map, township 24, range 19 east, Indian meridian, is placed in evidence and marked "Plaintiffs' Exhibit CC.")

50 question. This property is in the Cherokee nation?

Answer. Yes, sir.

51 question. It is improved?

Answer. Yes, sir.

52 question. This man occupies it?

Answer. Yes, sir.

53 question. He claims it to be his own?

Answer. Yes, sir.

54 question. What did you do with regard to this property when you were down there?

Answer. I asked him how much land he claimed and occupied, and he showed me by the corner stones on the land.

341 55 question. Did you go over the land?

Answer. I went over the land to the corner stones and marked it on my map.

56 question. Does Louis Shawnee occupy any other land besides this that you have just mentioned?

Answer. Yes, sir.

57 question. What other land does he occupy?

Answer. He occupies a piece in township 24, range 18 east, Indian meridian.

58 question. Have you seen that land?

Answer. Yes, sir.

59 question. State what you did with regard to that land; what examination you made; whether you saw it.

Answer. I went over the land with Louis Shawnee and went to the corner stones or Government survey stones, and he showed me what he claims as his land, that he was in possession of.

60 question. In what condition is that land?

Answer. It is improved.

61 question. Do you know where that land is?

Answer. Yes, sir.

62 question. Please say where it is.

Answer. It is in township 24, range 18 east, Indian meridian; east half of section 1 and north half of the northeast quarter of section 12.

63 question. How many acres does that comprise?

Answer. 411.04.

64 question. I show you a paper marked "Township No. 24, range No. 18, E. of Ind. mer.," and ask you if that is a correct map of the property as you have just described it?

Answer. Yes, sir.

(This is offered and received in evidence, and marked "Plaintiffs' Exhibit DD.")

65 question. Do you know Dr. Rufus Allen?

Answer. Yes, sir.

66 question. State who he is, where he resides, and what you know of him. What is his nationality?

Answer. Dr. Rufus Allen lives in the Cherokee nation, Indian Territory, and occupies land in township 26, range 17 east, Indian meridian. He has a Delaware family.

67 question. What do you know about the land that he occupies?

Answer. I saw the land; I have been over it, and have its description here on this map.

68 question. How many different, separate pieces of land do Dr. Allen and his family occupy?

Answer. Five.

69 question. How many members of his family are there?

Answer. I don't know how many members there are.

70 question. How many have you seen?

Answer. I have seen four or five.

71 question. Does Dr. Allen occupy this land as his own, or how does he occupy this land?

Answer. He occupies it as land belonging to himself and family.

72 question. Take the first piece of land occupied by Dr. Allen, and say where it is.

342 Answer. He has a plot of 240 acres, which is the northeast quarter of section 7 and the north half of the southeast quarter of section 7, township 26, range 17 east, Indian merid-

ian. The next plot he occupies is 720 acres, which is the south half of the southeast quarter of section 18, and the west half of section 17, and the southwest quarter of the southeast quarter of section 17, and the northeast quarter of section 20, and the east half of the northwest quarter of section 20, north half of north half of northeast quarter of section 19. He occupies also a plot numbering 80 acres, which is the south half of the southwest quarter of section 16.

73 question. Have you been over this land?

Answer. Yes, sir.

74 question. In what condition is it?

Answer. It is improved.

75 question. Does this man live on it?

Answer. Yes, sir; he lives on one piece and has tenants on the rest of it.

76 question. Does he claim it for his own and that of his family?

Answer. Yes, sir.

77 question. Do you know Charles F. Armstrong?

Answer. Yes, sir.

78 question. State what you know of him, what his nationality is, and where he lives.

Answer. He is a Delaware Indian; he lives in the Cherokee nation, Indian Territory.

79 question. Have you seen his land?

Answer. Yes, sir.

80 question. What knowledge have you of his land, and how did you get that knowledge?

Answer. I have been over his land, and he showed me the amount that he claims by metes and boundaries.

81 question. What did you do with regard to making yourself familiar with the quantity of this land?

Answer. I taken my township map with me and compared the metes and boundaries by the Government survey.

82 question. When you say "metes and boundaries," what do you mean?

Answer. I mean the boundaries of his land in legal subdivisions.

83 question. You do not mean metes and boundaries as a surveyor would stretch it out, in feet and inches?

Answer. No, sir.

84 question. When you say "legal subdivisions," what do you mean?

Answer. I mean the divisions that appear on the Government survey.

85 question. Describe Charles F. Armstrong's land by legal subdivisions, and state how you are enabled to so describe it.

Answer. He has the southeast quarter of section 19; the south half of the northeast quarter of section 19, and the south half of the north half of the northeast quarter of section 19, all in township 26 north, range 17 east of Indian meridian.

86 question. How many acres does Armstrong occupy?

Answer. Two hundred and eighty.

87 question. Has Armstrong got any family?

Answer. Yes, sir.

343 88 question. How many?

Answer. I think he has one child and a wife.

89 question. Do you know Henry Armstrong?

Answer. Yes, sir.

90 question. State his nationality, where he resides, where he occupies any land, where it is, and what you know about it.

Answer. He lives in the Cherokee nation, Indian Territory; he has a family of four or five—a wife and about four children; he has 714.76 acres in his possession. I have been over his land, and he showed me the number of acres that he claimed, and he showed me his right of occupancy by having it improved. He lives on it. He has all of section 30 and the south half of the northwest quarter of section 29, all in township 26 north, range 17 east of Indian meridian.

91 question. What is the total area of Henry Armstrong's land just described?

Answer. 714.76 acres.

92 question. Do you know Albert Armstrong?

Answer. Yes, sir.

93 question. State what you know of him, where he lives, what his nationality is, whether he occupies any land, how many members of his family, and what you know about his family and his land.

Answer. Albert Armstrong is a Delaware Indian; he lives in the Cherokee nation, Ind. T.; he occupies some land; he has a wife and two children. I looked at the land, and he showed me what he occupied; he lives on it; he has the north half of the northwest quarter of section 29, and the southwest quarter of section 29, and the east half of the northwest quarter of section 32, all in township 26 north, range 17 east of Indian meridian.

94 question. How many acres does that comprise altogether?

Answer. The north half of the northwsst quarter of section 29 has 80 acres; the balance described is 240 acres.

95 question. I show you a paper marked "Township No. 26 N., range No. 17 E., of Ind. mer.," on which there appear a number of plats set out in light red, marked 240, 520, and 80. I ask you what these plats represent?

Answer. It represents land belonging to Dr. Rufus Allen, which I have just testified to.

96 question. On the same paper there appears a plat painted light yellow, marked 280, and I ask you what that plat represents?

Answer. That represents the land of Charles F. Armstrong, which I have just testified to.

97 question. I show you a plat painted in Indian red, marked 714.76, and ask you what that plat represents?

Answer. That represents the land of Henry Armstrong, which I have just testified to.

98 question. I show you on the same piece of paper a plat painted in green, marked 80 and 240, and ask you what that plat represents?

Answer. That represents the land of Albert Armstrong, which I have just testified to.

(The said paper is offered in evidence, marked "Plaintiffs' Exhibit EE."

Counsel for defendant objects to the witness refreshing his memory or referring in any way to the plats—several small plats that have been offered in evidence—and objects to the plats themselves as being proper evidence in the case, for the reason that they seem to have been made up not by the witness at the time that the land was examined, and that he had not sufficient knowledge to make up such a plat or exhibit as he undertakes to show.)

344

99 question. Do you know Lilly Tanner?

Answer. Yes, sir.

100 question. Where does she live?

Answer. She lives in the Cherokee nation, Ind. T.

101 question. Does she occupy any land?

Answer. Yes, sir.

102 question. How do you know? Show me her land.

Answer. She has a tenant living on the land; it is the home place of herself and brothers for a great many years.

103 question. How long have you known Lilly Tanner?

Answer. About twenty years.

104 question. How long have you known the land that she occupies?

Answer. About fifteen years.

105 question. You have known the land itself for that long?

Answer. Yes, sir; I have known the land itself.

106 question. Are you able to point that land out upon a map?

Answer. Yes, sir.

107 question. How are you able to do so?

Answer. By being over the land and getting the landmarks, and by the use of a township map.

108 question. What township map do you refer to?

Answer. Township 25 north, range 17 east, of Indian meridian.

109 question. What map is that you mean, "by use of the township map"?

Answer. By use of the township map in which the land is located.

110 question. I ask you what map do you mean; did you use any map in locating this land?

Answer. Yes; I used the Government map.

111 question. Where did you get that Government map?

Answer. From the Land Office, in Washington.

112 question. How did you use that Government map in locating this land?

Answer. By going to the monuments or landmarks that were

placed on the land by the Government surveyors and getting the location of the property from these landmarks.

113 question. Did you use this map with the land that you have already testified to as belonging to other parties?

Answer. Yes, sir.

114 question. Is this the manner in which you located all the land which you are testifying to?

Answer. Yes, sir.

115 question. I show you a paper marked "Township No. 23 N., range No. 15 E., of Ind. mer.," which paper has signed in the right-hand corner the following:

"The above map of township No. 23 north, of range No. 15 east, of the Indian meridian, Indian Territory, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved.

"CHAS. D. WALCOTT, *Director.*

"U. S. Geological Survey, Washington, D. C., March 2, 1898."

345 On the left hand corner of this map appears:

"Land area, 22,928.10 acres; water area, 176.74 acres; total number of acres, 23,104.84."

Under these words appears as follows:

Surveys designated.	By whom surveyed.
Township lines.	R. A. Farmer.
Subdivisions.	F. M. Johnson and Fred Watts, Jr.
Meanders.	F. M. Johnson.

Amount of survey.	When surveyed.
M. Chs. Lks.	
24 0 45	Mar. 24. Apr. 7, 10, and 11, 1896.
60 3 14	Aug. 18–25, 1896.
7 38 86	Do.

Is this the map that you obtained from the Government?

Answer. That is one of them.

116 question. Did you use maps like this in identifying the lands that you have testified to?

Answer. Yes, sir.

117 question. You regard these maps as showing what they pretend to show?

Answer. Yes, sir.

118 question. You obtained them from the Government Land Office?

Answer. Yes, sir.

119 question. When you examined these lands did you identify them on these maps?

Answer. Yes, sir.

120 question. How did you identify them?

Answer. By going to the corner stones or monuments and comparing them with the Government map.

(Counsel for plaintiffs states that the maps are not offered in evidence because they are of record in the United States Government, and it is not necessary to burden the printed record in this case with them.)

121 question. State what you did with regard to Lilly Tanner's land in connection with these maps which you have testified to.

Answer. I went over the ground and obtained the location by the Government corner stones on the land, and marked it on my map.

122 question. How much land does she occupy?

Answer. Two hundred and forty acres.

123 question. I show you a paper marked "Township No. 25 N., range No. 17 E., Ind. mer.," and ask you if Lilly Tanner's land is set out correctly upon that paper?

Answer. Yes, sir.

124 question. How is it painted on that paper?

Answer. It is painted in red lines.

125 question. Do you know James Tanner?

Answer. Yes, sir.

126 question. Where does he live?

Answer. He lives in the Cherokee nation.

346 127 question. What is his nationality?

Answer. He is a Delaware.

128 question. Does he occupy any land?

Answer. Yes, sir.

129 question. How do you know?

Answer. Because he lives on it; I have been there and seen it.

130 question. Has he any family?

Answer. No, sir.

131 question. What examination did you make of his land, if any?

Answer. I went to the corner stones and taken its location as he gave it to me from the corner stones on the land.

132 question. Did you identify this location of his land by the aid of any map, or written or printed record?

Answer. Yes, sir.

133 question. What map did you use?

Answer. The Government map of township 25 N., range 17 E. of Ind. mer.

134 question. This Government map is one of the Government maps heretofore described by you?

Answer. Yes, sir.

135 question. How many acres does he occupy?

Answer. One hundred and sixty acres.

136 question. Is it improved?
Answer. Yes, sir.
137 question. Does he live on it?
Answer. Yes, sir.
138 question. I show you a paper marked "Township No. 25 N., range No. 17 E., Ind. mer.," and ask you if the land he occupies appears upon that paper?
Answer. Yes, sir.
139 question. In what color is it painted?
Answer. It is painted green.
140 question. Do you know E. M. Lorence?
Answer. Yes, sir.
141 question. What is his nationality?
Answer. He is a white man with a Delaware family.
142 question. Where does he live?
Answer. He lives in the Cherokee nation, Indian Territory.
143 question. What is the size of his family?
Answer. He has four children.
144 question. Wife living?
Answer. Yes, sir.
145 question. You know her?
Answer. Yes, sir.
146 question. Know the whole family?
Answer. Yes, sir.
147 question. How long have you known them?
Answer. I have known Lorence for ten or twelve years.
148 question. Do you know that the family are Delawares?
Answer. Yes, sir.
149 question. Do they occupy any land, and have you seen it?
Answer. Yes, sir.
150 question. Have you made any examination of it?
Answer. Yes, sir; I have been over it.
347 151 question. Do you know where that land is located?
Answer. Yes, sir.
152 question. How do you know?
Answer. By being over the land and by the use of a Government township map, as heretofore testified to.
153 question. Has he improved that land?
Answer. Yes, sir.
154 question. Does he live on it?
Answer. Yes, sir.
155 question. How many acres is that land?
Answer. 600.
156 question. I show you a paper marked "Township No. 25 N., range No. 17 E., Ind. mer.," and ask you if that land appears upon it?
Answer. Yes, sir.
157 question. How is it identified?
Answer. By being painted yellow.
158 question. Do you know Mrs. Addie Lorence?

Answer. Yes, sir.
159 question. Who is she?
Answer. She is the wife of E. M. Lorence; she is a Delaware Indian.
160 question. Has she a family?
Answer. Yes, sir.
161 question. The family she has is the same family her husband has?
Answer. No; she has a different family; she has two children.
162 question. Who is the father of these children?
Answer. Sam Love is the father of one of them and Charles Merritt is the father of the other one.
163 question. Does she occupy that land?
Answer. Yes, sir.
164 question. Live on it?
Answer. Yes, sir.
165 question. Have you seen it?
Answer. Yes, sir.
166 question. Have you located it?
Answer. Yes, sir.
167 question. How have you located it?
Answer. By a Government map, as I have before testified to.
168 question. Do you know how many acres that land is?
Answer. Four hundred and eighty acres.
169 question. How do you estimate the number of acres?
Answer. By the use of the Government map.
170 question. I show you a paper marked "Township No. 25 N., range No. 17 E. of Ind. mer.," and ask you if that land appears upon that paper?
Answer. Yes, sir.
171 question. How is it identified upon that paper?
Answer. By the plat painted brown.
172 question. You know William Adams?
Answer. Yes, sir.
173 question. Who is he?
Answer. He is my father, a Delaware Indian.
174 question. Has he any family?
348 Answer. Yes, sir.
175 question. What is his family?
Answer. A wife and seven children.
176 question. Do you know his land?
Answer. Yes, sir.
177 question. How long have you known it?
Answer. Twenty-five years.
178 question. Do you know where that land is?
Answer. Yes, sir.
179 question. How have you identified it?
Answer. By the use of the Government map, as before testified.
180 question. How many acres is that land?
Answer. Six hundred and forty acres.

181 question. I show you a paper marked "Township 25 N., range No. 17 E., Ind. mer.," and ask you if that land appears upon that paper?

Answer. Yes, sir; it does, and is in the plat painted red.

182 question, Taylor Roberts, who is he?

Answer. He is a white man and has a Delaware family; a wife and two or three children.

183 question. Where does he live?

Answer. In Indian Territory, Cherokee nation.

184 question. He occupies land there?

Answer. Yes, sir.

185 question. Does he live on it?

Answer. No, sir; he has a tenant on it.

186 question. Is the land improved?

Answer. Yes, sir.

187 question. Does he claim it as his own and that of his family?

Answer. Yes, sir.

188 question. Have you located it?

Answer. Yes, sir.

189 question. How have you identified it?

Answer. By the use of Government maps, as heretofore testified to.

190 question. How many acres is that land?

Answer. One hundred and sixty.

191 question. I show you a paper marked "Township No. 25 N., range No. 17 E. of Ind. mer.," and ask you if that land appears upon that paper?

Answer. Yes, sir; it is painted with light-green lines.

(This paper is offered in evidence and marked "Plaintiffs' Exhibit FF.")

192 question. Tell me how James Tanner's land, which appears in green upon Plaintiffs' Exhibit FF, is described.

Answer. It is the west half of the northeast quarter of section 20 and the east half of the northwest quarter of section 20, of township 25 north, range 17 east of Indian meridian.

193 question. Describe Lilly Tanner's land on Plaintiffs' Exhibit FF.

Answer. Lilly Tanner's land is the southeast quarter of the northeast quarter of section 20 and the northeast quarter of the southeast quarter of section 20, and the south half of the northwest quarter of section 21, the north half of the southwest quarter of section 21, all in township 25 north, range 17 east of Indian meridian.

349 194 question. Describe Addie Lorence's land as it appears on Plaintiffs' Exhibit FF.

Answer. She has the south half of the northeast quarter of section 30 and the southeast quarter of section 30, the east half of the southwest quarter of section 30 and the southwest quarter of section 29, all in township 25 north, range 17 east, Indian meridian.

195 question. Describe E. M. Lorence's land as it appears on the Plaintiffs' Exhibit FF.

Answer. He has southeast quarter of section 29 and the west half of the southwest quarter of section 28, and southeast quarter of the southwest quarter of section 28, the northeast quarter of section 32 and northwest quarter of section 33, all in township 25 north, range 17 east of Indian meridian.

196 question. Describe Taylor Roberts's land as it appears on plaintiffs' exhibit.

Answer. He has the southeast quarter of section 32.

197 question. Describe William Adams's land as it appears on Plaintiffs' Exhibit FF.

Answer. He has the west half of section 32 and the east half of section 31, all in township 25 north, range 17 east of Indian meridian.

198 question. Does your father, William Adams, occupy any land besides the land which you have just testified to?

Answer. Yes, sir.

199 question. What land is that?

Answer. It is in the township immediately south of the one before described.

200 question. Describe that township.

Answer. It is township 24 north, range 17 east of Indian meridian.

201 question. How much land is this?

Answer. 211.26 acres.

202 question. Is it improved?

Answer. Yes, sir.

203 question. Does he occupy it—live on it?

Answer. Yes, sir.

204 question. Have you been over it and examined it?

Answer. Yes, sir.

205 question. How have you identified it?

Answer. By the use of the Government maps, as heretofore testified to.

206 question. Describe this land of your father's.

Answer. It is a plot of 211.26 acres and is the northeast quarter of the northeast quarter of section 6 and the north half of the north half of section 5, in township 24 north, range 17 east of Indian meridian.

207 question. Do you know Mrs. Tom Wilson?

Answer. Yes, sir.

208 question. What is her nationality?

Answer. Delaware Indian.

209 question. Does she have any family?

Answer. Yes, sir.

210 question. How much?

Answer. She has a husband and one daughter.

211 question. Does she live in the Indian Territory?

Answer. Yes, sir.

350 212 question. Does she occupy any land there?

Answer. Yes, sir.

213 question. What land does she occupy?

Answer. She occupies the southwest quarter of section 7 and the south half of the northwest quarter of section 7, township 24 north, range 17 east, Indian meridian.

214 question. How do you know she occupies that land?

Answer. I have been to her house. She lives on it.

215 question. Is it improved?

Answer. Yes, sir.

216 question. How did you identify the land as you have described it?

Answer. I used the Government map, as I have heretofore testified to.

217 question. I show you a paper marked "Township No. 24 N., range No. 17 E. of Ind. mer.," and ask you if your father's additional land of 211.26 acres appears on that paper; and if so, how is it marked?

Answer. It is marked in red lines.

218 question. How does Mrs. Tom Wilson's land appear on that paper, if at all?

Answer. It is marked in green.

219 question. Do you know Mark Zulkey?

Answer. Yes, sir.

220 question. What is he?

Answer. He is a white man with a Delaware family. He lives in the Cherokee nation, Indian Territory.

221 question. How much is his family?

Answer. One wife and six or seven children.

222 question. Does he occupy any land in the Cherokee nation?

Answer. Yes, sir.

223 question. State what land he occupies.

Answer. He occupies the southwest quarter of section 3, the southeast quarter of section 4, the northeast quarter of section 9, the north half of the southeast quarter of section 9, all in township 24 north, range 17 east of Indian meridian.

224 question. Have you seen that land? Have you been over it?

Answer. Yes, sir.

225 question. Does he live on it?

Answer. He has a tenant on it.

226 question. Is it improved?

Answer. It is well improved.

227 question. Does he claim it as his own and that of his family?

Answer. Yes, sir.

228 question. How many acres is that land?

Answer. Five hundred and sixty.

229 question. How have you identified this land?

Answer. By being over it and the use of the Government map, as I have heretofore testified to.

230 question. I show you a paper marked "Township No. 24 N., range No. 17 E. of Ind. mer.," and ask you if that land appears upon that paper and how it is marked?

Answer. Yes, sir; by being painted yellow.

231 question. Do you know Joshua Wilson?

Answer. Yes, sir.

351 232 question. What is his nationality; is he married; and if so, how much is his family?

Answer. He is a Delaware Indian, residing in the Cherokee nation, Indian Territory; has a wife, and I do not know whether he has any children or not.

233 question. Does he occupy any land there?

Answer. Yes, sir.

234 question. Is it improved?

Answer. Yes, sir.

235 question. Is it improved and does he live on it?

Answer. Yes, sir.

236 question. Does he claim it for his own and that of his family?

Answer. Yes, sir.

237 question. How many acres is that land?

Answer. Five hundred and sixty.

238 question. Where is that land located?

Answer. It is located in the northwest quarter of section 15, north half of section 16, east half of the northeast quarter of section 17, in township 24 north, range 17 east, Indian meridian.

239 question. How do you know that is the land that you saw him occupy?

Answer. Because I was on the land and identified it by means of the Government maps, as heretofore testified to.

240 question. Do you know Calvin Everett?

Answer. Yes, sir.

241 question. He is a Delaware Indian?

Answer. Yes, sir.

242 question. State where he lives; how much his family is.

Answer. He has a Delaware wife and four or five children. He lives in the Indian Territory, Cherokee nation, and occupies land.

243 question. Have you seen that land?

Answer. Yes, sir.

244 question. Does he live on it?

Answer. He has a tenant on it.

245 question. Is it improved?

Answer. Yes, sir.

246 question. Does he claim it for his own and that of his family?

Answer. Yes, sir.

247 question. What land is that?

Answer. It is the southeast quarter of section 17, the northwest quarter of section 17, the west half of the northeast quarter of section 17, township 24 north, range 17 east, Indian meridian.

248 question. How have you identified this land?

Answer. By use of the Government maps, as heretofore testified to.

249 question. I show you a paper marked "Township No. 24 N., range No. 17 E. of Ind. mer.," and ask you if that land appears upon that paper?

Answer. Yes; it is marked in green lines.

250 question. Do you know Mary Parker?

Answer. Yes, sir.

251 question. What is her nationality? Where does she live?

Answer. She is a Delaware and lives in the Cherokee nation, Indian Territory.

252 question. Does she occupy land, improved or unimproved?

Answer. Yes, sir; improved.

352 253 question. Does she live on it?

Answer. Yes, sir.

254 question. Where is that land?

Answer. South half of section 16, north half of the north half of section 21, northwest quarter of section 22, and the west half of the southwest quarter of section 15, all in township 24 north, range 17 east, Indian meridian.

255 question. How many acres?

Answer. 720.

256 question. How many acres does Calvin Everett occupy?

Answer. 400.

257 question. How many acres does Joshua Wilson occupy?

Answer. 560.

258 question. With regard to Mary Parker's land, how have you identified the location of that land?

Answer. By the use of the Government map, as heretofore testified to. I examined the land myself and used the Government map myself.

259 question. I show you a paper marked "Township No. 24 N., range 17 E. of Ind. mer.," and ask you if that land of Mary Parker's appears thereon?

Answer. Yes, sir. It is marked in light pink.

260 question. Do you know Tom Lewis?

Answer. Yes, sir. He is an adopted Delaware.

261 question. Where does he live and how much is his family, and what does it consist of?

Answer. He has a Delaware wife and no children; he lives in the Cherokee nation, Indian Territory.

262 question. Does he occupy any land there?

Answer. Yes, sir.

263 question. Is it improved?

Answer. Yes, sir.

264 question. Does he claim it for his own?

Answer. Yes, sir.

265 question. Does he live on it?

Answer. He lives on it.

266 question. Have you seen it?

Answer. I have.

267 question. Where is that land?

Answer. It is the southwest quarter of section 17, northwest quarter of section 20, north half of northeast quarter of section 20, township 24 north, range 17 east, Indian meridian.

268 question. How many acres is that?

Answer. 400.

269 question. How have you identified that land?

Answer. By being over it and the use of the Government map, as heretofore testified.

270 question. I show you a paper marked "Township No. 24 N., range No. 17 E. of Ind. mer.," and ask you if that land appears thereon?

Answer. Yes; it is marked in very pale green.

271 question. Do you know a gentleman named R. C. Adams?

Answer. Yes, sir.

272 question. Who is he?

353 Answer. He is my brother and a Delaware Indian.

273 question. Does he live in the Indian Territory, Cherokee nation?

Answer. No, sir; he is temporarily residing in Washington.

274 question. Has he any land out there?

Answer. Yes, sir.

275 question. Do you know of any land that he happens to have?

Answer. Yes, sir; I know of a good deal.

276 question. State the land that you know he has.

Answer. In township 24 north, range 17 east of Indian meridian, he has the following lands: A plot of 314.60 acres, which is described as follows: North half of section 18; a plot of 320 acres which is described as follows: South half of the north half of section 21 and the southeast quarter of section 21; a plot of 240 acres which is described as follows: Southeast quarter of section 27, south half of the northeast quarter of section 27; 200 acres, which is described as follows: Northeast quarter of section 35, and northwest quarter of southeast quarter of section 35; a plot of 400 acres, which is described as follows: Southeast quarter of section 32, and northwest quarter of section 32, north half of the southwest quarter of section 32, all in township 24 north, range 17 east, Indian meridian, and painted red upon a paper so marked.

277 question. Has R. C. Adams any family?

Answer. Yes, sir; he has a wife and three children.

278 question. I show you a paper marked "Township No. 24 N., range No. 17 E., Ind. mer.," and ask you if that is the paper that you have been referring to under that title?

Answer. Yes, sir.

(Placed in evidence and marked "Plaintiffs' Exhibit GG.")

279 question. Do you know of any other land besides that just mentioned that R. C. Adams has; and if so, where and how is it described?

Answer. I know of some more land in township 23 north, range 17 east, Indian meridian, which is east half of section 4 and the west half of the northwest quarter section 3, consisting of 405.20 acres.

280 question. Have you seen this land—have you been over it—how have you identified it?

Answer. Yes, sir; by the use of a Government map, as heretofore testified to.

281 question. I show you a paper marked "Township No. 23 N., range No. 17 E., Ind. mer.," and ask you if this plot of 405.20 acres appears upon said paper and how is it identified?

Answer. It does, by being painted red.

(Said paper placed in evidence and marked "Plaintiffs' Exhibit HH.")

282 question. Do you know S. A. Miller?

Answer. Yes, sir.

283 question. Is he a Delaware?

Answer. Yes, sir. He lives in the Cherokee nation, Indian Territory; occupies land there.

284 question. Is he married, and has he got a family?

Answer. Yes, sir; a wife and four or five children.

285 question. Is the land that he occupies improved?

Answer. Yes, sir.

354 286 question. Does he claim it for his own and that of his family?

Answer. Yes, sir.

287 question. Have you seen that land?

Answer. Yes, sir.

288 question. How have you identified its location?

Answer. By the use of the Government map, as heretofore testified to.

289 question. Where is that land?

Answer. He has 520 acres, which is described as follows: East half of the west half of section 18 and the east half of section 18; the southwest quarter of the southwest quarter of section 17 in township 27 north, range 16 east, Indian meridian.

290 question. I show you a paper marked "Township No. 27 N., range No. 16 E. of Ind. mer.," and ask you if S. A. Miller's land appears upon that paper; and if so, how it is identified?

Answer. It does appear upon that paper, and is painted red.

291 question. Do you know Mrs. Mary McClure?

Answer. Yes, sir; she is a Delaware Indian; she lives in the Cherokee nation, Indian Territory; she occupies the northeast quarter of section 30, township 27 north, range 16 east, Indian meridian.

292 question. How many acres is that?

Answer. One hundred and sixty.

293 question. Have you seen that land? How are you able to so describe it?

Answer. By seeing the land and being over it, and by the use of the Government map as I have heretofore testified to.

294 question. Have you identified the location of that land upon

that Government map in the way you have testified to in regard to monuments placed there by the Government?

Answer. Yes, sir.

295 question. I show you a paper, marked "Township No. 27 N., range No. 16 E. of Ind. mer.," and ask you if that land appears upon that paper?

Answer. Yes, sir; and it is painted yellow.

(Said paper placed in evidence and marked "Plaintiffs' Exhibit II.")

296 question. Does S. A. Miller, of whom you have just testified, occupy any more land; if so, where is it and how is it described?

Answer. Yes; he occupies more land, and it is described as follows: All of section 6 and the south half of the southwest quarter of section 5; the north half of the northwest quarter of section 7; the northwest quarter of the northeast quarter of section 7; all in township 26 north, range 16 east, of Indian meridian.

297 question. How many acres is that?

Answer. Eight hundred and thirty-eight and eighty hundredths.

298 question. Have you seen that land?

Answer. Yes, sir; I was over it.

299 question. Is it improved?

Answer. Yes, sir.

300 question. How have you identified its location?

Answer. By being over the land and the use of Government map, as I have heretofore testified to.

301 question. Do you know I. N. Journeycake?

Answer. Yes, sir; he is a Delaware.

302 question. Does he live in the Indian Territory, Cherokee nation?

355 Answer. Yes, sir.

303 question. Does he occupy any land?

Answer. Yes, sir.

304 question. Have you seen it? Does he live on it?

Answer. Yes, sir.

305 question. Is it improved?

Answer. Yes, sir.

306 question. Is he married, and how many children?

Answer. He has a wife and four or five children.

307 question. This land that you have just mentioned, belonging to Mr. Journeycake, state where it is and how many acres.

Answer. He has 800 acres, which are described as follows: All of section 28 and the south half of the southwest quarter of section 21; the east half of the northeast quarter of section 29, in township 26 north, range 16 east, Indian meridian.

308 question. How have you been able to identify this land?

Answer. By being on the land and by the use of the Government map, as I have heretofore testified to.

309 question. I show you a paper, marked "Township No. 26 N.,

range No. 16 E., of Ind. mer.," and ask you if Mr. Journeycake's land appears thereon, and if so, how is it marked?

Answer. Yes; it appears thereon, and it is painted red.

310 question. E. M. Lorence, concerning whom you have just testified, does he possess any other land than that you have mentioned?

Answer. Yes, sir.

311 question. How many acres?

Answer. Eighty.

312 question. How is it described?

Answer. The south half of the northwest quarter of section 32, in township 26 north, range 16 east, Indian meridian.

313 question. Have you seen that land?

Answer. Yes, sir.

314 question. Does he claim it as his own; is it improved; is he in undisputed ownership of it?

Answer. Yes, sir; so far as I know he is.

315 question. How have you been able to identify that land?

Answer. By being on it and the use of the Government map, as I have heretofore testified to.

316 question. I show you a paper, marked "Township 26 N., range No. 16 E., Ind. mer.," and ask you if that land appears upon that paper, and if so, how it is marked?

Answer. Yes; it does appear upon that paper, and is marked in yellow lines.

(Said paper is placed in evidence and marked "Plaintiffs' Exhibit JJ.")

317 question. Do you know Jesse T. Miller?

Answer. I do.

318 question. What is he?

Answer. He is an adopted Delaware.

319 question. Has he a wife and some children?

Answer. Yes, sir; I do not know how many children.

320 question. Has he over two?

Answer. I do not know.

321 question. Have you seen two at a time?

356 Answer. I have seen one; I don't know how many he has; I have seen him have one child at a time.

322 question. Have you seen different children at different times?

Answer. I don't know. I know he has a wife and one child, for I have seen them.

323 question. Does he occupy any land?

Answer. Yes, sir.

324 question. How many acres?

Answer. Two pieces of land, described as follows: 160 acres, which is the southeast quarter of section 16, township No. 25 north, range 16 east, Indian meridian.

325 question. Have you seen that plot?

Answer. Yes, sir.

326 question. Have you been over it?

Answer. Yes, sir.

327 question. Is it improved; does he occupy it and claim it as his own?

Answer. Yes, sir.

328 question. How have you been able to identify it?

Answer. By being over it and the use of the Government map, as I have heretofore testified to.

329 question. What is the other plot that Mr. Miller occupies?

Answer. He has the west half of section 34 and the west half of the east half of section 34, in township No. 25 north, range No. 16 east, Indian meridian.

330 question. How many acres?

Answer. Four hundred and eighty.

331 question. Have you seen that land?

Answer. Yes, sir.

332 question. Does he occupy it, and has he improved it?

Answer. Yes, sir.

333 question. Does he claim it for his own?

Answer. Yes, sir.

334 question. Have you been over it?

Answer. Yes, sir.

335 question. How have you been able to identify it?

Answer. By being on the land and the use of the Government map, as I have heretofore testified to.

336 question. I show you a paper marked "Township No. 25 N., range No. 16 E., Ind. mer.," and ask you if these two plots of land of Mr. Miller's appear thereon?

Answer. Yes; they appear thereon, and are painted in pink.

337 question. Does Addie Lorence occupy any more land than you have testified to?

Answer. Yes, sir.

338 question. Where is it?

Answer. In township 25 north, range 16 east, Indian meridian, and it consists of the south half of section 29 and the north half of section 32; it is 640 acres.

339 question. Have you seen that land?

Answer. Yes, sir.

340 question. Have you been over it?

Answer. Yes, sir.

341 question. Is that land occupied by Mrs. Lorence herself?

357 Answer. She has a tenant on it.

342 question. Is it improved?

Answer. Yes, sir.

343 question. Does she claim it as her own? She has undisputed possession of it?

Answer. Yes, sir; so far as I know, she has.

344 question. How have you been able to identify this land?

Answer. By being on the land and with the use of Government map, as heretofore testified to.

345 question. I show you a paper marked "township No. 25 N.,

range No. 16 E., Ind. mer.," and ask you if the land appears upon that paper?

Answer. Yes; and is painted yellow.

346 question. Does Calvin Everett occupy any more land than you have already testified to?

Answer. Yes, sir; it is 160 acres; southeast quarter of section 33, township 25 north, range 16 east, Indian meridian.

347 question. Have you seen that land?

Answer. Yes, sir.

348 question. You have been over it?

Answer. Yes.

349 question. Does Mr. Everett occupy it and improve it?

Answer. Yes, sir.

350 question. Does he live on it?

Answer. He has a tenant on it.

351 question. Is he in undisputed possession of it?

Answer. So far as I know.

352 question. How have you been able to identify that land?

Answer. By being on the land and by the use of the Government map, as heretofore testified to.

353 question. I show you a paper, marked "Township No. 25 N., range No. 16 E., Ind. mer.," and ask you if the land appears upon that paper?

Answer. Yes, sir; and it is marked in green stripes.

354 question. Do you know J. E. Thomas?

Answer. Yes, sir.

355 question. What is he?

Answer. He is a Delaware Indian; he lives in the Cherokee nation, Ind. T.

356 question. Does he occupy any land there?

Answer. Yes, sir.

357 question. Have you seen it, and is it improved?

Answer. Yes, sir.

358 question. Does he claim it for his own—he is in undisputed possession of it?

Answer. Yes, sir.

359 question. Has he any family?

Answer. No, sir.

360 question. Have you identified the location of that land?

Answer. Yes, sir.

361 question. How?

Answer. By being on the land and the use of Government map, as I have heretofore testified to.

362 question. How many acres in that land?

358 Answer. Two hundred.

363 question. Where is it situated?

Answer. He has the south half of the southwest quarter of section 26, and the south half of the southeast quarter of section 27, and the northeast quarter of the northeast quarter of section 34, all in township 25 north, range 16 east, Indian meridian.

364 question. I show you a paper marked "Township No. 25 N., range No. 16 E., Ind. mer.," and ask you if that land appears thereon?

Answer. Yes; and it is painted blue.

365 question. Do you know Thomas Newcombe?

Answer. Yes, sir.

366 question. Where does he live; what is his nationality?

Answer. He is a Delaware Indian, living in the Cherokee nation, Ind. T.

367 question. Does he occupy land?

Answer. Yes, sir.

368 question. Is it improved, and does he live on it?

Answer. Yes, sir.

369 question. Does he claim it for his own and that of his family?

Answer. Yes, sir.

370 question. Has he got a family?

Answer. Yes, sir; a wife and one child.

371 question. Have you examined that land?

Answer. Yes, sir.

372 question. Have you been able to identify its location?

Answer. Yes, sir.

373 question. How?

Answer. By being on the land and the use of the Government map, as heretofore testified to.

374 question. How many acres in that land?

Answer. Four hundred. He has the north half of section 23 and the south half of the southeast quarter of section 14, all in township 25 north, range 16 east, Indian meridian.

375 question. I show you a paper and ask you if this land appears thereon. It is marked "Township No. 25 N., range No. 16 E. of Ind. mer."

Answer. Yes, and it is painted in green.

376 question. Do you know William Nichols?

Answer. Yes, sir.

377 question. Who is he?

Answer. He is a Delaware Indian, and has one child. He lives in the Cherokee nation, Ind. T.

378 question. Does he occupy any land?

Answer. Yes.

379 question. How long have you known this land?

Answer. For twenty-five years.

380 question. Is this land improved?

Answer. Yes, sir.

381 question. Have you been able to identify this land?

Answer. Yes, sir.

382 question. How?

Answer. By being over the land, and by the use of Government map, as heretofore testified to.

383 question. How many acres is that land?

359 Answer. 240. It is the south half of the southeast quarter of section 24 and the northeast quarter of section 25, all in township 25 north, range 16 east, Indian meridian.

384 question. I show you a paper marked "Township No. 25 N., range No. 16 E. of Ind. mer." and ask you if this land appears thereon.

Answer. Yes, and it is marked in pink stripes.

385 question. Do you know Tom Wilson?

Answer. Yes, sir.

386 question. State where he lives and what his nationality is.

Answer. He is a Delaware Indian; lives in Cherokee nation, Ind. T.

387 question. Has he any land there?

Answer. Yes, sir.

388 question. Does he occupy it, and is it improved?

Answer. Yes, sir.

389 question. Have you seen it—been over all of it?

Answer. Yes, sir.

390 question. Have you been able to identify this land?

Answer. Yes, sir.

391 question. How?

Answer. By being over it, and by the use of Government maps, as heretofore testified to.

392 question. How many acres?

Answer. 600.

393 question. How is it described?

Answer. As the northeast quarter of section 26, and the northwest quarter of the southeast quarter of section 26, and the southwest quarter of section 25, the west half of the southeast quarter of section 25, the northwest quarter of section 36, all in township 25 north, range 16 east, Indian meridian.

394 question. I show you a paper marked "Township No. 25 N., range No. 16 E., Ind. mer. ½," and ask you if this land appears thereon.

Answer. Yes; it is painted in very light green.

395 question. In addition to the land that you have already testified to as belonging to Mr. R. C. Adams, do you know of any more land that he has; and if so, how many acres, and where is it?

Answer. I know of another plot of land in township 25 north, range 16 east, Indian meridian, belonging to my brother, R. C. Adams, amounting to 160 acres, which is described as follows: The east half of the northeast quarter of section 35, the east half of the southeast quarter of section 26.

396 question. Have you been over that land?

Answer. Yes, sir.

397 question. Have you seen it?

Answer. Yes, sir.

398 question. Does your brother claim it as his own, and has he improved it?

Answer. Yes, sir.

399 question. I show you a paper marked "Township No. 25 N., range No. 16 E., Ind. mer.," and ask you if that land appears thereon?

Answer. Yes; and it is painted bright red.

400 question. Do you know Mrs. Rosa Bullette?

360 Answer. Yes, sir.

401 question. Is she a Delaware?

Answer. She is a Delaware Indian, living in Indian Territory, Cherokee nation.

402 question. Does she occupy any land?

Answer. Yes, sir.

403 question. Have you seen it—been over it?

Answer. Yes, sir.

404 question. Is it improved?

Answer. Yes, sir.

405 question. Does she live on it?

Answer. Yes, sir.

406 question. How have you been able to identify it?

Answer. By being over the land and the use of the Government map, as I have heretofore testified to.

407 question. You know its location by the use of that Government map?

Answer. Yes, sir.

408 question. Where is it located, and how many acres is it?

Answer. 360; located in township 25 north, range 16 east, Indian meridian, and is described as follows: Southwest quarter of section 36, southeast quarter of section 35, southwest quarter of the northeast quarter of section 35.

409 question. I show you a paper marked "Township No. 25 N., range No. 16 E., Ind. mer.," and ask you if that land appears thereon?

Answer. Yes, it does; and is painted Indian red.

(Said paper placed in evidence and marked "Plaintiffs' Exhibit K K.")

410 question. Do you know J. B. Heady?

Answer. Yes, sir.

411 question. Who is he?

Answer. He is a white man with a Delaware family. He has a wife and six or seven children.

412 question. Have you seen his land?

Answer. Yes, sir.

413 question. Does he occupy it and improve it?

Answer. He has tenants on it; it is well improved.

414 question. You have been over it and examined it?

Answer. Yes, sir.

415 question. Did you locate its correct position?

Answer. I think I have.

416 question. How?

Answer. By being on the land and the use of Government map, as heretofore testified to.

417 question. How many acres is that land, and where situated?

Answer. 953.16 acres, and situated in township 24 north, range 16 east, Indian meridian, and is described as follows: East half of section 7 and the northwest quarter of section 7, and east half and southwest quarter of section 6.

418 question. I show you a paper, marked "Township No. 24 N., range No. 16 E. of Ind. mer.," and ask you if Mr. Heady's land appears thereon?

Answer. Yes; and it is painted yellow.

419 question. Do you know Abner Adams?

Answer. Yes; he is my brother. He is a Delaware Indian; he lives in the Cherokee nation, Indian Territory.

361 420 question. Does he occupy any land?

Answer. He has 165.06 acres of land, which is situated in township 24 north, range 16 east, Indian meridian, and is described as follows: Northwest quarter of section 5.

421 question. How do you know that is his land?

Answer. I have been over it and examined it, and have examined its location by means of personal examination and by use of the Government map, as heretofore testified to.

452 question. Does Calvin Everett own any land in addition to that which you have testified to as belonging to him?

Answer. He has some in township 24 north, range 16 east, Indian meridian, consisting of 162.90 acres, which is described as follows: Northeast quarter of section 4.

453 question. Have you seen that land?

Answer. Yes, sir; I have seen the land and been over it.

454 question. How have you been able to identify its location?

Answer. By being over the land and by the use of Government map, as heretofore testified to.

455 question. I show you a paper marked "Township No. 24 N., range No. 16 E. of Ind. mer.," and ask you if Abner Adams' and Calvin Everett's land appear upon that paper?

Answer. Yes; Abner Adams' land is marked on that paper in red stripes and Everett's land is marked in solid brown.

456 question. Do you know Sarah Fields?

Answer. Yes, sir.

457 question. Is she a Delaware?

Answer. She is a Delaware Indian residing in the Cherokee nation, Indian Territory.

458 question. Does she occupy any land there?

Answer. Yes, sir.

459 question. Have you seen it—have you been over it?

Answer. Yes, sir.

460 question. Is it improved?

Answer. Yes, sir.

461 question. Does she claim it for her own?

Answer. Yes, sir.

462 question. Have you been able to identify its location?

Answer. Yes, sir.

463 question. How?

Answer. By being over the land and by the use of Government map, as I have heretofore testified to.

464 question. How many acres is that land, and where is it situated?

Answer. 1,218.28; situated in township 24 north, range 16 east, Indian meridian, and is described as follows: South half of section 4, the north half of section 9, the northwest quarter of section 10, the southwest quarter of section 3; lots 14, 13, and 15, in section 3; lots 2, 3, 4, 6, 7, and 8, in section 10; the northeast quarter of the southeast quarter of section 10, and lot 2 in section 11.

465 question. Does this tract, as described by lot numbers and section numbers, appear upon any map?

Answer. Yes, sir; it appears upon a certain map of township No. 24 north, range 16 east of Indian meridian, Indian Territory, on file in the office of the United States Geological Survey at Wash-
362 ington, dated March 2d, 1898, signed Chas. D. Walcott, director, on which the section numbers and lot numbers contained in my answer are duly set forth.

466 question. When you were over this land of Sarah Fields, did you use the map that you have referred to, in identifying that land?

Answer. Yes, sir.

467 question. How did you make use of that map as regards that land?

Answer. By going to the surveys and identifying the land marks and surveys on the land.

468 question. Did you make any memorandum on the map at the time?

Answer. Yes, sir; I marked it with pencil—blue pencil.

469 question. Did you identify the situation of the land by any monuments or marks?

Answer. Yes, sir.

470 question. And from those marks you made your memorandum on the map?

Answer. Yes, sir.

471 question. And that map, with your memorandum, is in your possession?

Answer. Yes, sir.

472 question. In addition to the land that you have already described as belonging to your brother, R. C. Adams, do you know of any other land in township 24 north, range 16 east, Indian meridian? If so, describe it.

Answer. Yes; I know of other land and I have gone over it and examined it and have located it by personal examination and the aid of the Government maps, as I have heretofore testified to, and, from my examination and location on the Government maps, I have computed this land at 767.98 acres, and it is described as follows

Lots 1, 2, 6, 7, and 8 in section 15; the south half of the northeast quarter, the southeast quarter, the northeast quarter of the southwest quarter, and the south half of the southwest quarter of section 15; the southwest quarter and the south half of the northwest quarter of section 14, and lots 3 and 5, section 16.

473 question. Does your brother, R. C. Adams, occupy and improve this land?

Answer. He has tenants on it.

474 question. Does he claim it as his own?

Answer. Yes, sir.

475 question. I show you a paper marked "Township No. 24 N., range No. 16 E., Ind. mer.," and ask you if Sarah Fields's land is marked on that paper and in what color?

Answer. Yes; and is marked in light pink.

476 question. Is R. C. Adams' land on that paper, and in what color?

Answer. Yes; in bright red.

477 question. I notice three plots of land marked on that paper in bright green, and ask you whose land that represents?

Answer. That is my land?

478 question. Do you occupy that land?

Answer. I have tenants on it.

479 question. Do you claim it as your own?

363 Answer. Yes; I have improved it.

480 question. Are the improvements on it yours, and you occupy it through your tenants?

Answer. Yes, sir.

481 question. Please describe those three plots of land, commencing with the first one of 240 acres.

Answer. The first one of 240 acres is described as follows: The southwest quarter of section 2, the southwest quarter of the northwest quarter of section 2, the northeast quarter of the northwest quarter of section 11, in township 24 north, range 16 east, Indian meridian.

482 question. Describe the plot of 840.00 acres.

Answer. That is the east half of section 14, the northeast quarter of section 23, the west half of the northwest quarter of section 24, the west half of the southwest quarter of section 13, and the northeast quarter of the southwest quarter of section 13 and the northwest quarter of section 13. This is in the aforesaid township and range.

483 question. Describe the section consisting of 95.35 acres.

Answer. That is the north half of the northwest quarter of section 22 and lot No. 1, section 21.

484 question. In addition to the land described as belonging to Henry Armstrong, is there another plot joining one of your plots?

Answer. Yes, sir.

485 question. It is a plot of 160 acres, is it not?

Answer. Yes, sir; and it appears upon the paper marked "Town-

ship No. 24 N., range 16 E., Ind. mer.," as a very pale green square, marked 160.

486 question. Did you examine that—go over it?

Answer. Yes, sir.

487 question. Does Mr. Armstrong live on it?

Answer. He has a tenant on it.

488 question. Has he improved it; did he put the improvements there?

Answer. Yes, sir.

489 question. Does he claim it as his own?

Answer. Yes, sir.

490 question. Did you locate this upon the governmental map as you have heretofore described?

Answer. Yes, sir.

491 question. Are you able to say how many acres that is, and how it is situated?

Answer. Yes; it consists of 160 acres, and is described as follows: South half of the northeast quarter of section 2, north half of the southeast quarter of section 2, in township 24 north, range 16 east, Indian meridian.

(Said paper is offered in evidence, marked "Plaintiffs' Exhibit L L.")

492 question. I show you a paper, marked "Township 23 N., range 16 E., Ind. mer.," upon which appear two squares marked in bright red, one of which has on it the figures "1880" and the other of which has on it the figures "39.33," and I ask you what this paper represents and what these red squares represent?

Answer. It represents the land of Mrs. L. E. Lane contained in ownship 23 north, range 16 east, Indian meridian.

493 question. Who is Mrs. L. E. Lane?

Answer. She is a Delaware Indian living in the Cherokee nation, Ind. T.

364 494 question. How are you able to locate her land as a part of this township?

Answer. By being on the land and by the assistance of the Government map, as I have heretofore testified to.

495 question. Please describe the location of that land?

Answer. The west half of section 28, the east half of section 29, the east half of the southwest quarter of section 29, the southeast quarter of the northwest quarter of section 29, the northwest quarter of section 33, the west half of the southwest quarter of section 33, all of section 32, the northeast quarter of section 31, the east half of the northwest quarter of section 31, the southwest quarter of the southwest quarter of section 30.

(This paper is offered in evidence and marked "Plaintiffs' Exhibit MM.")

496 question. Does Mrs. Lane live on that land?

Answer. Yes, sir.

497 question. Is it improved and does she claim it as her own?

Answer. Yes, sir.

498 question. I show you a paper, marked "Township No. 22 N., range No. 16 E., Ind. mer.," on which appear two plots marked in red, one of which is marked 79.92 and the other is marked 240, and I ask you what these plots represent?

Answer. They represent the additional land of Mrs. L. E. Lane.

499 question. Have you examined this additional land of Mrs. L. E. Lane?

Answer. Yes, sir.

500 question. Have you identified it by comparison with the Government map, ascertaining the boundaries and monuments as you have heretofore described?

Answer. Yes, sir.

501 question. Is the marking of these plots upon these maps the result of that comparison?

Answer. Yes, sir.

502 question. Take the first plat, marked 79.92, and describe its location.

Answer. It is the north half of the northwest quarter of section 5.

503 question. Take the one marked 240 and describe its location.

Answer. The south half of the southeast quarter of section 3, the northeast quarter of section 10; both of these are situated in township 22 north, range 16 east, Indian meridian.

504 question. Has Mrs. Lane improved this land and does she claim it for her own; she occupies it through her tenants, doesn't she?

Answer. Yes, sir.

(Received in evidence and marked "Plaintiffs' Exhibit NN.")

505 question. I show you a paper, marked "Township No. 27 N., range No. 15 E., Ind. mer.," on which appears one plat in red, marked 160, one plat in green, marked 520, one plat in a very faint greenish white, marked 160, one plat in yellow marked 160, one plat with green lines on it, marked 160, one plat with green lines on it, marked 40, one plat in Indian red, marked 200; please state what these plats represent; take first this one (indicating).

Answer. The one marked 160, in red, represents the land belonging to Adam Wilson, or part of it. It is the southeast quarter of section 33. The plat in green, marked 320, is land belonging
365 to Mary V. McClure; it is the south half of section 26. The plat painted in a faint greenish white, marked 160, represents the land belonging to William Alltime; it is the southwest quarter of section 25. The yellow plat, marked 160, represents the land of Frank Longbone, and is the northwest quarter of section 36. The plat painted in green lines, marked 160, is the land of Joseph Secondyne, and is the northeast quarter of section 36. The plat painted in green lines, marked 40, also belongs to Joseph Secondyne, and is the northeast quarter of the northwest quarter of section 36.

The plat painted in Indian red, marked 200, is the land belonging to John W. Stout, and is the southeast quarter of section 36, and the southeast quarter of the southwest quarter of section 36; all of this land is in township 27 north, range 15 east, Indian meridian.

506 question. The numbers on these plats represent what?

Answer. The number of acres.

507 question. Have you examined the lands belonging to each of these persons last named?

Answer. Yes, sir.

508 question. Did you go over them?

Answer. Yes, sir.

509 question. Do these parties occupy these lands; do they claim them as their own?

Answer. Yes, sir.

510 question. Are these lands improved?

Answer. Yes, sir.

511 question. How are you enabled to give the location of these lands as you have given them?

Answer. By being on the land and examining them by means of the monuments and marks and identifying them upon the Government maps, as heretofore testified to.

(Received in evidence and marked "Plaintiffs' Exhibit OO.")

512 question. I show you a paper marked "Township No. 26 N.' range No. 15 E., Ind. mer.," on which appears a plat marked in red with the number 1602.77, a plat marked in red with the number 640 upon it, a plat marked in red with the number 160 on it, a plat marked in red with the number 80 on it, a plat painted yellow with the number 800 on it, a plat painted yellow with the number 560 on it, a plat painted Indian red with the number 560 upon it, a plat painted light pink with the number 240 on it, a plat painted in blue stripes with the number 560 on it, a plat painted in solid green with the number 480.28 on it, a plat painted in green stripes with the number 160.12 on it, a plat painted in light pink with the number 320.04 on it, a plat painted solid blue with the number 40 on it, a plat painted a greenish white with the number 720 upon it. I ask you what the numbers on these plats represent?

Answer. Acres.

513 question. Take each plat and state whose land it represents.

Answer. Plat marked 1602.77, painted red, represents land of Adam Wilson; he is a New York Indian adopted by the Delaware Indians, living in the Cherokee nation, Indian Territory.

514 question. Have you seen that land?

Answer. Yes, sir.

515 question. Is it improved; does he occupy it; does he claim it as his own?

366 Answer. Yes, sir.

516 question. Describe the situation of that land.

Answer. The east half of section 4, the west half of section 3, the southeast quarter of section 3, the southwest quarter of section 2, the

east half of section 10, the northwest quarter of section 10, the northeast quarter of section 9, in township 26 north, range 15 east, Indian meridian. The plat painted red, marked 640, is also land of Adam Wilson, which I have identified in the same manner as the former land, and it is described as follows: East half of section 11, west half of section 12. Plat painted red, marked 160, is also land of Adam Wilson, and it is the southwest quarter of section 32.

517 question. Have you identified this in the same manner as you did the other plat?

Answer. Yes, sir.

520 question. Is this land improved and occupied by this man?

Answer. Yes, sir. The plat painted yellow with the figures 800 on it represents the land of John W. Stout and is situated in the southeast quarter of section 27, the southwest quarter of section 26, the northeast quarter of section 34, the north half of section 35.

521 question. How are you able to identify this land as so situated and as being the land of Mr. Stout?

Answer. By being on it and seeing the Government monuments and the use of the Government map, as I have heretofore testified to, and because Mr. Stout is in possession of it.

522 question. He has improved it, has tenants on it, and claims it for his own?

Answer. Yes, sir. The plat painted solid brown, marked 560, represents additional land of John W. Stout, and is the north half of section 27, the southwest quarter of section 27, the west half of the northwest quarter of section 26. He is in possession of the land by tenants. I have been on the land and have been able to identify it by the metes and boundaries and by the use of a Government map, as I have heretofore testified to. The plat painted light pink, marked 240, represents the additional land of Simon Secondine; it is the northeast quarter of section 16, the south half of the southeast quarter of section 9. It is in the possession of Simon Secondine by tenant. He claims it as his own. I have seen the land, been on it, and been able to identify it by the monuments on said land and by the use of the Government map, as I have heretofore testified. The plat painted with blue stripes and marked 560 represents the land of Joseph Brown; he is a Delaware Indian. It is described as the southwest quarter of section 10, the north half of section 15, the north half of the southeast quarter of section 15. He occupies the land and lives on it. I have been on the land and identified it by the Government monuments and by the use of the Government map, as I have heretofore testified to. The plat painted solid yellow and marked 560 represents additional land of John W. Stout, and is described as follows: The west half of section 11, the northwest quarter of section 14, the west half of the northeast quarter of section 14. He is in possession of it; he lives there; it is his home. I have been on the land and identified it by the Government monuments and Government map, as I have heretofore testified to.

The plat painted a pale greenish white and marked 400 represents land of Lilly Smith, a Delaware Indian, who is in possession

of it. It is all of west half of section 13 and the east half of
367 the northeast quarter of section 14. I have been on the land and identified it by the monuments and use of the Government map, as I have heretofore testified.

The plat painted a solid green and marked 480.28 represents the land of Mary C. Beyzian; it is the east half of section 2 and the southwest fourth of section 1. It is her home place, where she lives. I have been on the land and identified it by the monuments and use of the Government map, as I have heretofore testified to.

The plat painted with green stripes and marked 160.12 is the land of Solomon Armstrong, a Delaware Indian, living in the Cherokee nation. It is the northwest quarter of section 1. I have been on the land. He occupies and lives on it. I have identified it by the use of the monuments and the Government map, as I have heretofore testified to.

The plat painted pale pink, marked 320.04, represents additional land of Simon Secondine, and is his home place. I have been on the land and have identified it by the Government monuments and by the use of the Government map, as I have heretofore testified to. It is the east half of section 1.

The plat painted solid blue, marked 40, is additional land of Stephen Miller. I have been on the land and identified it. It is a part of his home place, where he lives. I have identified it by the monuments and the use of the Government map.

523 question. All of this land which you have testified to as being represented by these painted plats, concerning which I questioned you as appearing on a paper marked "Township No. 26 N., range No. 15 E., Ind. mer.." describe land all situated in that township and in that range, do they not?

Answer. Yes, sir.

(Offered in evidence and marked "Plaintiffs' Exhibit PP.")

524 question. The people whom you have testified to as owning this land are all Delaware Indians and reside in Indian Territory, Cherokee nation?

Answer. Yes, sir.

529 question. This paper I show you, which is marked "Township No. 25 N., range No. 15 E., Ind. mer.," does that contain an accurate map of that land?

Answer. Yes, sir.

(Offered in evidence and marked "Plaintiffs' Exhibit QQ.")

530 question. You possess some additional land in township 24 north, range 14 east, Indian meridian?

Answer. Yes, sir.

531 question. Have you made an accurate map of that land?

Answer. Yes, sir.

532 question. Did you identify the location of that land as you have identified other locations, as you have testified?

Answer. Yes, sir.

533 question. I show you a paper marked "Township 24 N., range 14 E., Ind. mer.," and ask you if that paper contains an accurate map of that land?

Answer. Yes, sir.

534 question. Please state the location of that land.

Answer. The southeast quarter of section 11 and the west half of section 12, the northeast quarter of section 12, the north half
368 of the southeast quarter of section 12, and the north half of the northwest quarter of section 13.

535 question. How many acres is that?

Answer. Eight hundred acres.

(Offered in evidence and marked "Plaintiffs' Exhibit RR.")

536 question. Do you know of an additional plot of 240 acres which belongs to your brother, R. C. Adams, situated in township 23 N., range 14 E., Ind. mer.?

Answer. Yes, sir.

537 question. I show you a paper so marked and ask you if it appears thereon?

Answer. Yes, sir.

(Said paper is offered in evidence and marked "Plaintiffs' Exhibit SS.")

538 question. Please describe the location of that land.

Answer. The northeast quarter of section 24, the east half of southeast quarter of section 13.

539 question. Have you been over this land?

Answer. Yes, sir.

540 question. Does your brother occupy it?

Answer. He has tenants on it; he occupies it through his tenants.

541 question. Is it improved?

Answer. Yes, sir.

542 question. Does he claim it as his own?

Answer. Yes, sir.

543 question. Have you identified the position of it by means of the Government monuments and Government maps, as you have heretofore testified to?

Answer. Yes, sir.

544 question. I show you a paper marked "Township No. 28 N., range No. 19 E., Ind. mer." Does that paper contain plats of certain lands?

Answer. Yes, sir.

545 question. Have you been over each plat of land?

Answer. Yes, sir.

546 question. Have you examined it with regard to the boundaries and the Government monuments on said land?

Answer. Yes, sir.

547 question. And what have you done toward identifying the location of that land upon the maps?

Answer. I went to the monuments and located by the use of the Government map, in the manner which I have before testified to.

548 question. This land is upon this paper in red, yellow, and green plats, is it not?

Answer. Yes, sir.

549 question. And the numbers that appear upon each plat represent what?

Answer. The number of acres in each.

550 question. Is that true with regard to every plat that has gone in evidence?

Answer. Yes, sir.

551 question. Who owns the land represented by green plat, marked 547.34?

Answer. Henry Wolf, a Delaware Indian, living in the Cherokee nation.

369 552 question. Describe the location of that plat?

Answer. He has the south half of the northeast quarter of section 3 and the southeast quarter of the northwest quarter of section 3, the southeast quarter of section 3, the east half of the southwest quarter of section 3, and the southwest quarter of section 2.

553 question. Has he improved this land, and does he claim it as his own?

Answer. Yes, sir.

554 question. Who owns the green plat marked 258.44?

Answer. Henry Wolf owns it, and it is described as follows: The southeast quarter of section 1, the south half of the northeast quarter of section 1. He occupies it, claims it as his own, and has improvements on it.

555 question. Who owns the green plat marked 320?

Answer. Henry Wolf. He occupies it through a tenant, and claims it as his own. It is the south half of section 26.

556 question. Who owns the yellow plat marked 800?

Answer. L. W. Barker; and it is described as follows: Southwest quarter of section 13, the east half of section 14, northwest quarter of section 14, the east half of the southeast quarter of section 14, the north half of the northeast quarter of section 23. He occupies it, has improvements on it, and claims it for his own.

557 question. Who owns the yellow plat marked 640?

Answer. L. W. Barker. It is the south half of section 23 and the north half of section 26. He occupies and owns it and claims it as his own; has it improved.

558 question. Who owns the red plat marked 480?

Answer. Rachael Anderson, a Delaware Indian; and it is described as follows: The northwest quarter of section 12, the northeast quarter of section 11, the south half of the southeast quarter of section 2, the south half of the southwest quarter of section 1. She occupies it and claims it as her own.

(The paper referred to, marked "Township No. 28 N., range No. 19 E. of Ind. mer.," offered in evidence and marked "Plaintiffs' Exhibit TT.")

559 question. I show you a paper marked "Township No. 29 N., range No. 19 E., Ind. mer.," on which there are plats painted in green, red, and Indian red, on which appear certain figures. What do these plats represent?

Answer. They represent certain land.

560 question. Have you seen and examined this land?

Answer. Yes, sir.

561 question. How have you identified the location of it?

Answer. By being on the land and by the Government monuments, and the use of the Government maps.

562 question. What do the figures upon these plats represent?

Answer. The number of acres.

563 question. Take the green plat marked 400, describe its location, and to whom it belongs.

Answer. It belongs to Henry Wolf, a Delaware Indian; it is the south half of section 33, the east half of the southeast quarter of section 32. He has improvements on it and is in possession of it; he claims it for his own.

The red plat marked 640 belongs to Rachael Anderson, a
370 Delaware Indian. She has improvements on it, and claims it for her own, and lives on it. It is all of section 36.

The Indian red plat marked 320 is the land of Rachael Wilkins, a Delaware Indian. It is the south half of section 25. She occupies it, has improvements on it, and claims it for her own.

(Offered in evidence and marked "Plaintiffs' Exhibit UU.")

564 question. I show you a paper marked "Township No. 28 N., range 20 E. of Ind. mer.," on which appear two plats, one in Indian red and the other in bright red, and ask you what these plats represent?

Answer. They represent land of Delaware Indians.

565 question. Have you examined this land?

Answer. Yes, sir.

566 question. And have you been over it?

Answer. Yes, sir.

567 question. How have you located its correct position?

Answer. By the monuments and use of the Government map, as heretofore testified to.

568 question. The numbers which appear upon this plat represent what?

Answer. The number of acres.

569 question. The plat in Indian red, marked 327.26, represents whose land?

Answer. The land of Rachael Anderson. It is the southeast quarter of section 6 and the south half of the north half of section 6.

570 question. The plat in bright red, marked 394.56; whose land is that, and how is it described?

Answer. It is the land of Charles C. Anderson, a Delaware Indian, who occupies it and lives on it. It is the southwest quarter of sec-

tion 6, the northwest quarter of section 7, the north half of the northeast quarter of section 7.

571 question. Do the parties whom you have mentioned live upon their land? Do they have improvements on it and claim it as their own?

Answer. Yes, sir.

572 question. They are in undisputed possession of it?

Answer. So far as I know.

(Offered in evidence and marked "Plaintiffs' Exhibit VV.")

573 question. I show you a paper marked "Township No. 24 N., range No. 21 E., Ind. mer." on which appear plats with numbers on them, marked in red, yellow, brownish white, green, Indian red, green lines and pink lines, and ask you what these colored plats represent and what the numbers on them represent?

Answer. The colored plats represent the land occupied by Delaware Indians, and the numbers are the number of acres in each plat.

574 question. Have you examined the land represented by each plat?

Answer. Yes, sir.

575 question. How have you located their exact position?

Answer. By the use of the Government map and by the aid of the Government monuments, as heretofore testified to.

576 question. Are these lands represented by these plats occupied and improved?

Answer. They are occupied and improved by Delaware Indians.

577 question. Do the people claim ownership to the plats as you describe them?

371 Answer. Yes, sir.

578 question. And, so far as you know, the claim of ownership is not disputed?

Answer. Yes, sir.

579 question. Take up the plat painted in bright red and marked 1040; tell who claims ownership to that plat as you have described, and the situation of the plat.

Answer. John D. Marker; it is the southwest quarter of section 9, the southeast quarter of section 8, northeast quarter of section 17, the east half of the southeast quarter of section 17, the west half of section 16, the northeast quarter of section 16.

580 question. Take the plat marked 320, painted bright yellow, and tell who claims ownership to that as you have described, and the situation of that plat.

Answer. Thomas E. Ketchum, a Delaware Indian. It is the southeast quarter of section 16, the west half of the southwest quarter of section 15, the south half of the northwest quarter of section 15.

581 question. Take the plat in brownish white, marked 360, and tell who claims ownership to that one as you have described, and give a description of the land.

Answer. Hester A. Hawkins, a Delaware Indian. It is the southeast quarter of section 15 and the east half of the southwest quarter of section 15, the north half of the northeast quarter of section 22, the northeast quarter of the northwest quarter of section 22.

582 question. Take the plat marked in solid green with the numbers 320 on it and state who has any evidence of ownership as you have described, and the situation of the plat?

Answer. Lizzie Lumbard, a Delaware Indian. It is the south half of section 22.

583 question. Who owns the green plat marked 160; where is it situated and who has evidence of ownership as you have described?

Answer. Lizzie Lumbard, also. It is the southeast quarter of section 36.

584 question. Who has evidence of ownership, as you have described, to the brown plat marked 520, and where is that situated?

Answer. Alice J. Lynch, a Delaware Indian. It is the south half of section 26, the east half of the southeast quarter of section 27, the northwest quarter of section 35, the west half of the northeast quarter of section 35, the northwest quarter of the southeast quarter of section 35, the northeast quarter of the southwest quarter of section 35.

585 question. Take the plat painted in green stripes, and marked 240, and state who has evidence of ownership in the manner which you have heretofore described, and where that plat is situated.

Answer. The land is owned by Rosa Conner, a Delaware Indian. It is the east half of the northeast quarter of section 35, the west half of the northwest quarter of section 36, the south half of the southwest quarter of section 25.

586 question. The plat marked in pink stripes with the figures 80 on it; state who has evidence of ownership in the manner which you have heretofore described, and where that is situated.

Answer. That is owned by Sarah A. McCamish, a Delaware Indian. It is the east half of the northeast quarter of section 25.

372 587 question. These plats that you have testified to, which appear by my question to be on paper marked "Township 24 N., range 21 E., Ind. mer." are situated, are they not, in that township and that range?

Answer. Yes, sir.

(Offered in evidence and marked "Plaintiffs' Exhibit WW.")

588 question. I show you a paper marked "Township 24 N., range 22 E., Ind. mer." on which appear two plats marked in red, and on which plats are certain figures. I ask you what these plats represent and what those figures represent?

Answer. The plats represent land in the possession of Delaware Indians, and the numbers represent the number of acres, in township No. 24 N., range No. 22 E., Ind. mer.

589 question. Take the red plat, marked 132.64, and state who claims ownership to that land.

Answer. That is additional land of Sarah A. McCamish. It is the west half of the west half of section 30.

590 question. Have you been over that land?

Answer. Yes, sir.

591 question. And how have you identified its location?

Answer. By the monuments and use of the Government maps, as heretofore testified to.

592 question. You examined the boundaries of it, and Sarah McCamish claims ownership of it, occupies it, and has improved it?

Answer. Yes, sir.

593 question. Is living on it? So far as you know, no one disputes her ownership?

Answer. Yes, sir.

594 question. Who occupies the plat represented by 148.20?

Answer. Sarah A. McCamish.

595 question. Have you been over that land?

Answer. Yes, sir.

596 question. How do you identify its location?

Answer. By the Government monuments and the use of the Government map, as heretofore testified to.

597 question. State how it is located?

Answer. In the southwest quarter of section 31.

(The paper in question is offered in evidence and marked "Plaintiffs' Exhibit XX.")

598 question. I show you a paper marked "Township No. 23 N., range 15 E., Ind. mer.", on which appears a plat in red and a plat in yellow. What do these plats represent?

Answer. The land belonging to Delaware Indians situated in said township and range.

599 question. And the numbers upon these plats represent what?

Answer. The number of acres contained.

600 question. Have you examined the land which you say these plats represent?

Answer. Yes, sir.

601 question. How have you identified its location?

Answer. By the Government monuments and the use of the Government maps, as heretofore testified to.

602 question. The location is accurately set out upon this paper?

Answer. Yes, sir.

603 question. The people who claim to own these lands—is their possession disputed, so far as you know?

Answer. No, sir.

373 604 question. They have put improvements upon them?

Answer. Yes, sir.

605 question. And they are in possession of them?

Answer. Yes, sir.

606 question. Who is in possession of the land represented by the red plat with the numbers 324.40?

Answer. That is additional land of R. C. Adams.

607 question. Who claims ownership to the yellow plat marked 806?

Answer. L. E. Lane.

608 question. Please describe this yellow plat.

Answer. The southwest quarter of the northeast quarter, the southeast quarter, lots 9, 12, and 13, and the southeast quarter of the southwest quarter, section 25; the northeast quarter, the east half of the northwest quarter, lots 1 and 4, the southeast quarter and the northeast quarter of the southwest quarter, section 36.

(This paper is offered in evidence and marked "Plaintiffs' Exhibit YY.")

609 *question. I show you a* paper marked "Township No. 24 N., range No. 20 E., Ind. mer.," on which appears a plat marked in red, and I ask you what does that plat represent?

Answer. It represents land belonging to Delaware Indians.

610 question. Have you examined that land?

Answer. Yes, sir.

611 question. How have you been able to identify its location?

Answer. By the monuments and use of the Government map, as I have heretofore testified to.

612 question. This land is correctly set forth upon this plat?

Answer. Yes, sir.

613 question. It is situated in township 24 north, range 20 east, Indian meridian?

Answer. Yes, sir.

614 question. Who claims ownership to that land?

Answer. Frances Brown.

615 question. Does she occupy it; has she improved it; so far as you know, her claims to it are undisputed?

Answer. Yes, sir.

616 question. Please describe the location of that land.

Answer. The northeast quarter, the northeast quarter of the northwest quarter to Missouri, Kansas and Texas railway, the southeast quarter of the northwest quarter to said railroad on the east, lot 3 on the east to said railroad, the northeast quarter of the southwest quarter, the south half of the southwest quarter, section 19, and the northwest quarter of section 30.

(Said paper is offered in evidence and marked "Plaintiffs' Exhibit ZZ.")

617 question. Speaking with regard to all of the exhibits that go on the record to-day, marked "BB" to "ZZ," inclusive, they represent lands owned by Delaware Indians, do they not?

Answer. Yes, sir.

618 question. I understand you to say that you have personally examined each piece of land that you have to-day testified to?

Answer. Yes, sir.

619 question. How were you enabled to make these maps repre-

sented by these exhibits and set forth upon them accurately the land to which each plat is supposed to refer?

374 Answer. By use of the Government maps.

620 question. When you examined these lands, did you make any memorandum of their location?

Answer. Yes, sir.

621 question. Written memorandum?

Answer. Yes, sir; I got the written memorandum of each location.

622 question. As ascertained in connection with the Government map?

Answer. Yes, sir.

623 question. And have you this written memorandum?

Answer. Yes, sir.

624 question. When you prepared these exhibits that were put in evidence to-day, did you make any use of that written memorandum?

Answer. Yes, sir; we used the written memorandum and the Government map.

625 question. These exhibits to-day represent the pictorial result of that written memorandum; is that true?

Answer. Yes, sir.

626 question. Who assisted you in preparing these exhibits?

Answer. Mr. Frerett.

627 question. What did he do with regard to these exhibits?

Answer. He went over the exhibits with me and painted the colors upon them.

628 question. Did you direct him where to paint them and what colors to picture?

Answer. Yes, sir.

629 question. And these directions that you gave him were taken from your memorandum?

Answer. Were taken from my memorandum.

630 question. And these memoranda that you refer to were made in Indian Territory?

Answer. Yes, sir.

631 question. And these memoranda were the result of your examination of these lands and monuments, assisted by the Government maps, to which you have testified?

Answer. Yes, sir.

HORACE M. ADAMS.

It is stipulated between counsel that the witness may be again put upon the stand and his testimony continued; and the cross-examination of the witness is not waived, but it is expressly stipulated and agreed that it is hereby adjourned until such time as the witness again takes the stand.

I, Harry H. Hollander, a notary public in and for the District of Columbia, certify that at the time and place aforesaid Horace M. Adams, a witness on behalf of the plaintiffs in the above-entitled cause, was by me sworn before any question was put to him to tell

the truth, the whole truth, and nothing but the truth relative to the said cause; and that the answers were taken down in my presence and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 20th day of December, A. D. 1900.

HARRY H. HOLLANDER,
[SEAL.] *Notary Public.*

375 Continuation of the deposition of Horace M. Adams, a witness produced, sworn, and examined at the hour of 2.10 p. m. on the 29th day of December, 1900, at Washington, D. C., before the undersigned notary public in and for the District of Columbia, in the above-entitled cause.

Present on behalf of complainants: M. E. Harby, Esq., of counsel.
Present on behalf of defendants: John J. Hemphill, Esq., of counsel.

And thereupon said HORACE M. ADAMS was examined by counsel for complainants, and testified as follows in answer to interrogatories:

(Counsel for the defendants objected to all the testimony on the part of Mr. Adams in this case going to show the location of the lands occupied by the Delaware Indians, as also all testimony relating to the cultivation, improvement, and holding of said lands, or any of them, by said Delaware Indians, on the ground that it is incompetent and irrelevant and as not being within the jurisdiction conferred upon the Court of Claims by the act of Congress under which this case is brought.

It is understood and agreed by and between the counsel for the respective parties that this shall relate to all the testimony of Mr. Adams upon these points, and that the objection need not again be repeated.)

By Mr. HARBY:

632 question. Mr. Adams, how long have you resided in the Cherokee nation?

Answer. About thirty-two years, I think.

633 question. Are you acquainted with the system of Government survey of the land in the Indian Territory?

Answer. Yes, sir.

634 question. Will you describe the manner in which the land is physically marked?

Answer. It is marked by townships, ranges, and sections, and the section corners are marked by Government corner stones on every corner of a section.

635 question. Are these corner stones lettered or figured?

Answer. They have marks indicating the number of miles from

the township line; when it is timber land, they have letters on the witness trees.

636 question. In addition to these corner stones, what other physical marks are there in the way of monuments?

Answer. There are iron posts at the corner of each township.

637 question. And are these marked or lettered?

Answer. Yes, sir; they tell you the township and range that the post is in.

638 question. Besides the witness trees and iron posts and corner stones, are there any other evidences of subdivisions put up by the Government?

Answer. The quarter stones every half mile around the section.

639 question. That is all, is it?

Answer. Yes, sir.

640 question. Since you testified here last have you been in the Indian Territory?

Answer. Yes, sir.

641 question. And what did you do there this time?

376 Answer. I got the location of the lands.

642 question. Will you give the names of the people whose lands you located, giving at the same time the number of the township north and the number of the range east and the number of acres?

Answer. I located in township 20 north, range 12 east, 760 acres for George Bullette; township 21 north, range 12 east, 160 acres for George Bullette.

Township 22 north, range 12 east, 480 acres for Mrs. Washington; 240 acres for Mary Barnette; 400 acres for William Thomas.

Township 23 north, range 12 east, 320.21 acres for Oh-lut-whe-now-a-qua.

Township 24 north, range 12 east, 560 acres for William McEwin.

COUNSEL FOR DEFENDANTS: I think I will have to object to this.

By Mr. HEMPHILL:

Question. When was this list made up?

Answer. It was made up here from notes or from the list I made while on the ground.

Question. Where is the original?

Answer. It is here.

Question. How did you make the original up?

Answer. From maps—from the Government township maps, and being on the ground, seeing the corner stones, and taking my notes on small maps and making a list of the names separately in each township.

Question. Did you have any map with you when you went around all over this ground?

Answer. Yes, sir; I had the Government township maps.

Question. Do you claim to have gone to the corner stone of each one of these subdivisions of land?

Answer. Yes, sir.

Question. Every one of them?

Answer. Yes, sir.

Question. Did you make any memorandum at the time?

Answer. Yes, sir.

Question. Where is that memorandum?

Answer. I have my memorandum—part of it on the township maps and part of it—in fact, I have it all here.

(Counsel for defendants objects to the witness testifying from a copy of a paper of which he has the original, on the ground that it is incompetent for the witness to testify from a copy or from a paper made up subsequent to the date of the original entries.)

By Mr. HARBY:

643 question. Mr. Adams, you are at present testifying with regard to the names of those people who occupy land in Indian Territory, from a written list, are you not; and that written list was prepared under whose supervision?

Answer. Under my supervision.

644 question. From what?

Answer. From a written list that I made while on the ground.

645 question. These notes that you made, this memorandum, is in what shape; what do they consist of?

Answer. They are simply township plats and field notes describing the location of the land that I was on in each township.

377 646 question. And about how many different plats and memoranda or field notes are comprised in the work that makes up the list of these names that you are now testifying from?

Answer. There are 58 plats.

647 question. This list, then, is a condensed summary of these 58 different plats and field notes?

Answer. Yes, sir.

648 question. How long did it take you to condense into the list you are testifying from the memoranda contained in these 58 plats?

Answer. We were about three weeks making the whole thing.

649 question. Have you compared the list you are now testifying from with the records contained upon the various plats and field notes and memoranda that you made?

Answer. Yes, sir.

650 question. Is it a correct copy?

Answer. Yes, sir.

By Mr. HEMPHILL:

Question. Is that in typewriting you are now reading from?

Answer. Yes, sir.

Question. Are you a typewriter?

Answer. No, sir.

Question. You didn't make that?
Answer. I didn't write it; no, sir.
Question. That is a condensation, you say, of a large number of other memoranda you made in the Territory?
Answer. Yes, sir.
Question. Who else helped you to get that up?
Answer. Miss Talliafero.
Question. And who else?
Answer. She and myself; she is the only one that helped me.

By Mr. HARBY:

651 question. She did the typewriting?
Answer. Yes, sir.
652 question. You showed her what to do?
Answer. Yes, sir.

(Counsel for defendants objects to the testimony of the witness as incompetent unless the witness could testify from memoranda made in that way.)

By Mr. HARBY:

653 question. Will you now continue giving me a list of the people whose land you visited, giving at the same time the township north and range east, with the number of acres?
Answer. I will now continue my answer:
Township 25 north, range 12 east, 200 acres for Matilda Halfmoon; 160 acres for Pa-tah-a-coh-o.
Township 26 north, range 12 east, 320.12 acres for John Hallett; 260 acres for William Johnson; 80 acres for Jane Wheeler; 240 acres for Mary Anson; 80 acres for Josie Anderson; 400 acres for Pat-tah-a-coh-o; 160 acres for Joe Wagon; 160 acres for Mrs. Andrew Miller.
Township 27 north, range 12 east, 240.85 acres for John Young; 242.19 acres for Frenchman; 880 acres for John Yellowjacket; 160 acres for Mrs. Halfmoon; 160 acres for Henry Armstrong, Jr.;
378 320 acres for Widow Bill Swannock; 320 acres for Jonas Swannock; 640 acres for Jane Requa.
Township 28 north, range 12 east, 80 acres for Mary Lee; 320 acres for Martha Swannock; 481.02 acres for Lenno; 554.16 acres for Frenchman; 752.85 acres for Frank Frenchman; 480 acres for William Wilson; 160 acres for Tom Buffalo; 320 acres for James Wilson; 160 acres for Mrs. Nancy Wilson; 400 acres for John Young.
Township 29 north, range 12 east, 1009.25 acres for R. C. Adams.
Township 20 north, range 13 east, 212.39 acres for George Bullette; 720 acres for John Bullette.
Township 21 north, range 13 east, 799.76 acres for Mary Spybuck; 477 acres for James Walker; 180 acres for R. C. Adams; 79.96 acres for John Walker.
Township 22 north, range 13 east, 145.12 acres for William

Thomas; 72.28 acres for Mrs. Washington; 460.43 acres for R. C. Adams.

Township 23 north, range 13 east, 440 acres for R. C. Adams.

Township 24 north, range 13 east, 640 acres for Mrs. Jim Cæsar; 66.97 acres for Wm. McEwin; 160 acres for Geo. Wilson.

Township 25 north, range 13 east, 159.85 acres for John Jackson; 320 acres for Joseph Brown; 880 acres for Lizzie Bixley; 320 acres for Silas Miller; 720 acres for John Sarcoxie; 360.27 acres for Mary B. Sarcoxie; 240 acres for Reuben Sarcoxie; 720 acres for John Brown; 640 acres for Robert Wheeler; 240 acres for John Marshall; 80 acres for Lizzie Beaver; 520 acres for Lun-set-tah-o; 160 acres for Bettie Dunn; 560.07 acres for Pat-tah-a-coh-o; 799.99 acres for Fielding Halfmoon; 320 acres for Lizzie Halfmoon; 400 acres for Mrs. Andrew Miller; 320 acres for Wm. Johnson; 400.32 acres for Julia Bronson.

Township 26 north, range 13 east, 160 acres for John Marshall; 800 acres for John Hallett; 480 acres for Mary B. Sarcoxie; 440 acres for Henry B. Sarcoxie; 160 acres for Matilda Halfmoon; 160 acres for Fielding Halfmoon; 760 acres for J. J. Rice; 560 acres for Jefferson D. Sarcoxie; 980 acres for James Wilson; 160 acres for Harry Arnold; 640 acres for Jonas Swannock; 40.77 acres for Mrs. Andrew Miller; 502.25 acres for Nellie Knipe; 164.68 acres for Patah-at-coh-o; 720 acres for James Day; 404.21 acres for Wm. Johnson; 240 acres for Anna Paradee; 160 acres for Robert Whiteturkey; 243.15 acres for Jane Wheeler; 480 acres for Widow Whiteturkey; 150 acres for Albert Whiteturkey; 160 acres for Sam Whiteturkey; 725.68 acres for Arthur Armstrong.

Township 27 north, range 13 east, 1,360 acres for W. H. Shailer; 1,000 acres for Sam Williams; 489.56 acres for Arthur Armstrong; 480 acres for Eugene White; 640 acres for Wha-ho-na; 560 acres for John Kinney; 480 acres for Henry and Lilly Peterson; 722.83 acres for Wm. McEwin; 802.55 acres for Mrs. Billy Wilson; 605.57 acres for Sophia Buffalo; 440 acres for Mary Caps; 400 acres for Mrs. Blackwing; 200 acres for Mrs. Ice Wilson; 280 acres for Winda-a-la-qua; 162 acres for Wm. Beaver; 320 acres for Josie Buffalo; 80 acres for Tom Buffalo; 232.84 acres for Mary Delaware; 560 acres for Wm. Brown; 120 acres for She-ke-now-o-qua; 524.65 acres for Henry Armstrong, Jr.; 240 acres for Frank Overlees; 364.03 acres for Dutch Whiteturkey; 200 acres for Robert Whiteturkey; 420 acres for Mrs. Sam Williams; 160 acres for Soldier's wife; 120 acres for A. H. Norwood.

Township 28 north, range 13 east, 924.77 acres for Ah-pah-
379 me-now-oqua; 960 acres for J. W. Gibson; 1,440 acres for J. B. Parker; 1,280 acres for Charles Elkhair; 1,360 acres for Eliza Elkhair; 805.19 acres for Geo. Washington; 160 acres for Wm. McEwin; 400 acres for Stephen Bezian; 480 acres for Sophia Buffalo; 160 acres for James Wilson; 163.32 acres for Pa-mah-le-ma; 160.84 acres for John Young; 43.39 acres for Wm. and Lilly Wilson; 167.51 acres for Martha Swannock; 577.48 acres for Mary Lee; 715.34 acres for Alex Black; 1,240 acres for John Parks; 115.39

acres for Mrs. Sam Williams; 120 acres for Jane Falleaf; 856.43 acres for Col. Jackson; 160 acres for Mrs. Joe Halfmoon; 320 acres for Charlie Machine.

Township 29 north, range 13 east, 479.57 acres for Sam Williams; 720 acres for Col. Jackson; 720 acres for Ah-ph-me-now-o-qua; 240 acres for Mrs. Joe Halfmoon; 160 acres for Geo. Falleaf; 3,055.23 acres for R. C. Adams.

Township 22 north, range 14 east, 723.82 acres for R. C. Adams; 240 acres for John Bullette.

Township 23 north, range 14 east, 440 acres for R. C. Adams.

Township 25 north, range 14 east, 798.26 acres for Daniel Anderson; 480 acres for Arthur Armstrong; 519.28 acres for Edgar Halfmoon; 560 acres for Simon Secondine.

Township 26 north, range 14 east, 640 acres for Andrew Miller; 1,120 acres for John R. Willey; 400 acres for James Thompson; 480 acres for S. A. Miller; 1,240 acres for Albert Curleyhead; 463.92 acres for John Sarcoxie; 440 acres for Wm. Easy; 400 acres for Lizzie Marshall.

Township 27 north, range 14 east, 1,252.41 acres for Wm. McEwin; 1,280.41 acres for Mrs. Soldier; 320 acres for Soldier; 160 acres for John Yellowjacket; 200 acres for R. C. Adams; 1,280 acres for Carrie V. Overlees; 320 acres for Nancy Hildebrand; 160 acres for James Thompson; 578.47 acres for Win-da-a-la-a-qua; 293.88 acres for Wha-ho-na; 440 acres for Mrs. Ice Wilson; 308.19 acres for Sam Whiteturkey; 67.27 acres for Mrs. Blackwing.

Township 28 north, range 14 east, 1,450 acres for R. C. Adams; 762.62 acres for Geo. Falleaf; 560 acres for Lizzie Beaver; 168.33 acres for Jane Falleaf; 312.20 acres for John Parks, 224.06 acres for Wm. McEwin; 640 acres for John Young; 160 acres for Ellen Young; 480 acres for Mrs. Soldier.

Township 29 north, range 14 east, 319.86 acres for Geo. Falleaf.

Township 25 north, range 15 east, 640 acres for Sally O. Smith; 1,043.75 acres for R. C. Adams.

Township 26 north, range 15 east, 160 acres for Simon Secondine; 600 acres for Abraham Ketchum; 320 acres for R. C. Adams.

Township 27 north, range 15 east, 320 acres for Solomon Armstrong; 160 acres for Jacob Secondine; 160 acres for Joseph Secondine; 160 acres for Anderson Secondine; 220 acres for George Smith; 356.22 acres for R. C. Adams.

Township 28 north, range 15 east, 960 acres for A. J. Everett; 720 acres for Frank Lucas.

Township 29 north, range 15 east, 480 acres for Geo. and Eliza Falleaf.

Township 22 north, range 16 east, 880 acres for John Bullette.

Township 23 north, range 16 east, 1,117.66 acres for W. C. Smith.

Township 24 north, range 16 east, 480 acres for John Ketchum.

Township 25 north, range 16 east, 721.48 acres for William
380 Bobian; 80 acres for Lelia M. Carey; 240 acres for John Q. Conner; 200 acres for Benjamin Conner.

Township 26 north, range 16 east, 480 acres for M. E. Armstrong;

160 acres for Carrie V. Overlees; 240 acres for Chas. K. Long; 80 acres for Cora Keys; 160 acres for A. W. Ketchum; 120 acres for J. W. Keyes; 400.71 acres for L. A. Keyes; 160 acres for Barbara Strather; 480.82 acres for Irene Dick; 160 acres for Geo. Smith; 720 acres for Chas. V. Tanner; 160.18 acres for B. J. Love; 239.82 acres for Nancy Palmer; 160.10 acres for Susie Conner.

Township 27 north, range 16 east, 560 acres for C. W. Childers; 280 acres for Martha White; 360 acres for Susie Conner; 320 acres for Simon Love; 560 acres for Amanda Wilson; 316.25 acres for R. C. Adams; 480 acres for Jacob and Joseph Lucas; 240 acres for John Captain; 480 acres for Jeff. Zane.

Township 28 north, range 16 east, 320 acres for John Kinney.

Township 23 north, range 17 east, 160 acres for R. C. Adams.

Township 25 north, range 17 east, 79.81 acres for Lelia M. Carey; 320 acres for Henry Armstrong.

Township 26 north, range 17 east, 314.05 acres for M. E. Armstrong; 720 acres for Mary White; 160 acres for Henry Zeigler.

Township 27 north, range 17 east, 231.39 acres for Martha Conner; 432.68 acres for Susie Connor; 310.05 acres for Charles Childers; 468.33 acres for Horace Goodtraveler's children; 156.04 acres for Martha White.

Township 28 north, range 17 east, 440 acres for Martha Conner.

Township 25 north, range 18 east, 160 acres for John Paschal.

Township 15 north, range 19 east, 310 acres for R. C. Adams.

Township 16 north, range 19 east, 411.17 acres for R. C. Adams.

Township 22 north, range 19 east, 1,040 acres for R. C. Adams.

Township 23 north, range 19 east, 960 acres for R. C. Adams.

Township 24 north, range 19 east, 480 acres for Thomas Secondine.

Township 15 north, range 20 east, 173.41 acres for R. C. Adams.

Township 16 north, range 20 east, 1,025.17 acres for R. C. Adams.

Township 25 north, range 20 east, 170 acres for R. C. Adams.

Township 23 north, range 21 east, 160 acres for Mary Half; 565.25 acres for Elizabeth Ketchum; 443.60 acres for Mrs. Wyman Thompson.

Township 22 north, range 22 east, 1,200 acres for R. C. Adams.

Township 26 north, range 23 east, 160 acres for James Washington; 160 acres for Joseph Washington.

Township 11 north, range 24 east, 301.36 acres for R. C. Adams.

Township 21 north, range 24 east, 240 acres for R. C. Adams.

654 question. You have testified that you located the lands of these various people by the aid of Government maps of the locality in question and Government monuments. Did you at the same time make a record upon plats of the result of your observations and investigations?

Answer. Yes, sir.

655 question. What did you do with the plats upon which you made this record?

Answer. I brought them here to copy from them.

656 question. Describe what you did in the way of copying them.

Answer. We took the plats and colored in different colors the land occupied by the Delawares in each separate township from the memorandum I made.

381 657 question. Did you mark on these plats the number of the range and township?

Answer. Yes, sir.

658 question. Where did you get these plats?

Answer. From the land office.

659 question. I show you a plat on which is a colored record. Will you tell me what it represents?

Answer. It represents the land of George Bullette, 760 acres, in township 20 north, range 12 east of the Indian meridian.

660 question. Describe the tract in that township which is colored on that plat.

Answer. It is the east half of section 25, 320 acres; the northeast quarter of section 36, 160 acres; the east half of the northwest quarter of section 36, 80 acres; the north half of south half of section 36, 160 acres; the southeast quarter of northwest quarter of section 36, 40 acres.

(Counsel for complainants here introduced in evidence the plat just referred to, and it is marked "Complainant's Exhibit AAA.")

661 question. Is this plat, "Complainant's Exhibit AAA," a copy of your original memoranda?

Answer. Yes, sir.

662 question. Did you use a map of this kind in locating the land of George Bullette?

Answer. I used a Government township map; yes, sir; a map of that kind.

(It appearing that the original memoranda made by the witness consists, among other things, of Government maps which contain a quantity of lithographing, it is hereby admitted and consented by and between counsel that the copies of said memoranda and maps which are offered in evidence are correct copies, and that they be received in evidence in place of the original maps and memoranda referred to by the witness, subject to the same objections that attach to the said originals.)

663 question. Did you use these Government township maps in locating all the land you have testified to?

Answer. Yes, sir.

664 question. And you made your own memoranda also?

Answer. Yes, sir.

665 question. After you had made this memoranda and used these Government plats did you transcribe your notes on to maps which contained colored memoranda of the land owned by various people?

Answer. Yes, sir.

666 question. And is that transcription correct?

Answer. Yes, sir.

667 question. I now show you a paper, which you will please describe.

(Counsel for defendants further objects to the testimony of the witness on the ground that it has not been shown that he is an expert or that he is in any way competent to testify as to the boundaries of lands or that he has such experience, skill, or knowledge as enables him to testify as to the range, township, section, etc., in which the various lands are said to be located.)

382 Answer. This is a plat of township 21 north, range 12 east of the Indian meridian, which shows the land of George Bullette—the southeast quarter of section 2, 160 acres. The land of George Bullette is marked in red on said plat.

(Counsel for complainants offers said plat in evidence, and same is marked "Complainant's Exhibit BBB.")

668 question. I show you another paper. Please state what it is.

Answer. This is a map of fractional township 22 north, range 12 east of Indian meridian, and represents the land of Mrs Washington, marked in red, and the land of William Thomas, marked in green, and the land of Mary Barnett, marked in yellow. The land is described as follows: Mrs. Washington's land on said map consists of the east half of section 24, 320 acres; the northeast quarter of section 23, 160 acres. Mary Barnett's land consists of the northeast quarter of section 26, 160 acres; the north half of southeast quarter of section 26, 80 acres. William Thomas's land consists of the south half of section 13, 320 acres; the north half of northwest quarter of section 24, 80 acres.

(Counsel for complainants here introduced said plat in evidence, and same is marked "Complainant's Exhibit CCC.")

669 question. I show you another paper which you will please describe.

Answer, This is a map of fractional township 23 north, range 12 east of Indian meridian, and it has marked in green the land of Oh-lut-whe-now-a-qua, consisting of the east half of the northwest quarter of section 1, 80.21 acres; the south half of northwest quarter of northwest quarter of section 1, 20 acres; the southwest quarter of northwest quarter of section 1, 40 acres; the north half of southwest quarter of section 1, 80 acres; the northeast quarter of southeast quarter of section 2, 40 acres; the southeast quarter of northeast quarter of section 2, 40 acres, and the south half of the northeast quarter of northeast quarter of section 2, 20 acres.

(Counsel for complainants offers the plat in question in evidence and same is marked Complainants' Exhibit DDD.

Counsel for the complainants offers in evidence a number of plats similar to those described by witness, and they are marked in evidence Complainants' Exhibit EEE to Complainants' Exhibit ZZZ, inclusive, and Complainants' Exhibit AAAA to Complainants' Ex-

hibit ZZZZ, inclusive, and Complainants' Exhibit AAAAA to Complainants' Exhibit FFFFF, inclusive.)

670 question. Mr. Adams, I show you Complainants' Exhibit EEE. Please describe it.

Answer. This is a map of fractional township 24 north, range 12 east of Indian meridian; it has marked on it in red the land of William McEwin, which is described as follows: The east half of section 25, 320 acres; the northeast quarter of section 36, 160 acres; the east half of northwest quarter of section 36, 80 acres.

671 question. I show you the Complainants' Exhibit FFF. Please describe it.

Answer. This is a map of fractional township 25 north, range 12 east of Indian meridian, the land of Mathilda Halfmoon being red and the land of Pa-tah-a-coh-o painted green.

The land of Mathilda Halfmoon is the southwest quarter of the northwest quarter of section 13, 40 acres; the south half of the northeast quarter of section 14, 80 acres; the north half of the southeast quarter of section 14, 80 acres.

383 Pa-tah-a-coh-o's land is as follows: The southeast quarter of section 36, 160 acres.

672 question. I show you Complainants' Exhibit GGG. Please describe that.

Answer. This is a map of fractional township 26 north, range 12 east of Indian meridian, and shows the land of John Hallett, red; William Johnson, yellow; Jane Wheeler, green; Mary Anson, brick red; Josie Anderson, purple; Pat-tah-a-coh-o, pink; Joe Wagon, red stripe; Mrs. Andrew Miller, yellow stripe.

John Hallett's land is the northwest quarter of the northeast quarter of section 1, 40.05 acres; the south half of northeast quarter of section 1, 80 acres; the east half of northwest quarter of section 1, 80.07 acres; the south half of southeast quarter of section 1, 80 acres; the northwest quarter of southeast quarter of section 1, 40 acres.

William Johnson's land is described as the east half of southwest quarter of section 1, 80 acres; the east half of northwest quarter of section 12, 80 acres; the northwest quarter of northeast quarter of section 12, 40 acres; the north half of northeast quarter of northeast quarter of section 12, 20 acres; the southeast quarter of southeast quarter of section 12, 40 acres.

Jane Wheeler's land, the east half of southeast quarter of section 13, 80 acres.

Mary Anson's land, the west half of southeast quarter of section 13, 80 acres; the east half of southwest quarter of section 13, 80 acres; the east half of northwest quarter of section 24, 80 acres.

Josie Anderson, the north half of northeast quarter of section 24, 80 acres.

Pat-tah-a-coh-o, the southeast quarter of section 24, 160 acres; the northeast quarter of section 25, 160 acres; the east half of southeast quarter of section 25, 80 acres.

Joe Wagon, the southwest quarter of section 25, 160 acres.

Mrs. Andrew Miller, the south half of northeast quarter of section 36, 80 acres; the north half of southeast quarter of section 36, 80 acres.

(Counsel for the complainants offers to show witness Complainants' Exhibit HHH, and it appearing on said exhibit that same is a plat divided into geometrical squares, the same as the other exhibits referred to and testified to by the witness, which plat is entitled "Township No. 27 north, range 12 east of Indian meridian;" and it appearing that there are set out on said plat various colors, and it appearing that there is on said plat a legend which contains the name of some person opposite each color, and that there is attached to said exhibit a typewritten paper which purports to describe the land of each person whose name is set out in said legend, it is stipulated by and between counsel for the parties hereto that the witness would testify that the exhibits set forth the land belonging to the people whose names appear in the said legend located in the township in question, and that the number of acres and the description of said land contained in the said typewriting and accorded to each person is the number of acres and description that the witness would testify to if asked in detail; and it is further stipulated that the said plat be received in evidence for what it appears to be, as though testified to by the witness, with the same force and
384 effect as if the witness were to testify to it in detail, but with no other; and that the said typewriting be received in evidence as the testimony of the witness with the same force and effect as if he, in so many words and in the language and figures set out in said typewriting, testified to same, but with no other force and effect than if so testified to by him.

It is further stipulated that the foregoing stipulation shall apply to the following exhibits and typewriting and legends and all marks appearing thereon or attached thereto; this being done to save time, and it being understood that these are received the same as if the witness were examined with reference to them, but subject to any and all objections properly existing against the testimony of this witness, the same as if they were interposed and set out herein.

The following are the exhibits with regard to which the foregoing stipulations are, in effect, between counsel.

Complainants' Exhibits III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, XXX, YYY, ZZZ; Complainants' Exhibits AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, LLLL, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ; Complainants' Exhibits AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF.)

673 question. You have heard the foregoing stipulation and you have heard the list of exhibits called out to the stenographer. These various exhibits were prepared by you, were they not?

Answer. Yes, sir.

674 question. And, as to the land represented by each exhibit, state what you know, together with what you know as to the person occupying said land.

Answer. I have been over all the land. The people occupying it claim it for their own, use it, and occupy it by farming the land themselves or by a tenant.

675 question. And is this true of each plat of land that is portrayed upon the exhibits that have to-day been offered in evidence?

Answer. Yes, sir.

676 question. The names of the people that appear upon these exhibits, are they the correct names of the people occupying the land in question?

Answer. Yes, sir.

677 question. Do you know that as a matter of personal observance?

Answer. Yes, sir.

678 question. State what you did to ascertain that.

Answer. I went to the people themselves and found their different locations. I was personally acquainted with nearly every Delaware in the tribe.

679 question. What acquaintance have you among this people, if any?

Answer. I have lived among them all my life, and I have been with a great many of them personally.

680 question. Have you visited them?

Answer. Yes, sir.

681 question. Have you received visits from them?

Answer. Yes, sir.

682 question. Are these people Cherokees or Delawares?

Answer. They are Delawares.

385 683 question. These exhibits which have been received in evidence to-day pretend to describe certain lots of land, and they describe the ownership and occupation of these lands to certain people whose names are set forth on the exhibits. State what you know as to the correctness of the description of these lands and the occupancy of them as set out by said exhibits.

Answer. I went to each different tract of land separately and found the owner of the tract, and got the location from the Government township maps and by going to the Government corner stones on each separate tract, and I got the description from the map and corner stones and made a note of this, from which I drew these plats.

684 question. These maps, then, which you prepared, set forth in accurate detail the result of the notes and memoranda which you made as you have described?

Answer. Yes, sir.

685 question. As to each parcel of land in question, what did you see in the way of improvements and occupancy?

Answer. I saw on them houses and farms, orchards, pastures, etc.

686 question. Is any of the land which is set out on these exhibits unoccupied and unclaimed?

Answer. No; not according to our laws.

687 question. What do you mean by that?

Answer. According to our laws we hold a quarter of a mile from our improvements as our possession.

688 question. This is the Cherokee law?

Answer. Yes, sir; where our land does not conflict with our neighbor or eldest settler.

689 question. This is the general custom in the Cherokee nation at present?

Answer. Yes, sir.

690 question. These people whose names are set out on these exhibits, do they claim the land ascribed to them on said exhibits?

Answer. Yes, sir; they claim the ownership of the land described.

691 question. Is their possession disputed or undisputed, so far as you know?

Answer. It is undisputed as far as I can say.

692 question. Did you see any two people claiming the ownership of the same piece of land?

Answer. No, sir.

693 question. Do any Cherokees make claim to the land occupied by these Delawares whose names appear in these exhibits?

Answer. Not as I know of.

694 question. They are in public and peaceful possession of it?

Answer. Yes, sir.

695 question. Did you examine each piece of land and locate the boundaries thereof, as is set out on the exhibits received in evidence to-day?

Answer. Yes, sir.

696 question. And in making that location and examination what maps or records did you use, if any?

Answer. I had the Government township maps.

697 question. What do you mean by Government township maps?

Answer. The maps of the different townships that I got in Washington from the Land Office and Geological Survey.

386 698 question. Did you get them from there?

Answer. I got them from my brother and he got them there.

699 question. I show you a photolithographic plat entitled fractional township 20 north, range 12 east, of Indian meridian, Indian Territory, signed Geological Survey, Washington, D. C., March 21, 1898, Charles D. Walcott, director, and ask you if you used this map in locating anybody's land in the Indian Territory?

Answer. I did.

700 question. Whose land did you locate with the help of this map?

Answer. George Bullette's.

701 question. In addition to using this map did you make any note of locations or other boundaries?

Answer. Yes, sir.

702 question. What did you do in that regard?

Answer. I went to the corner stone on the ground claimed by George Bullette—the Government corner stone.

703 question. What else, if anything?

Answer. And the township corners.

704 question. How are these corners marked?

Answer. By an iron post securely set in the ground, and printed on the top of it is the township and range.

(Counsel for complainants here offered in evidence the map just above referred to, and same is marked "Complainants' Exhibit GGGGG.")

705 question. Did you, in locating all the other lands in regard to which you have testified in your to-day's examination and your former testimony, use Government maps similar to this map, "Complainants' Exhibit GGGGG"?

Answer. Yes, sir.

706 question. And this exhibit, "Complainants' Exhibit GGGGG," is a specimen copy of such Government plats which were used by you in making your locations?

Answer. Yes, sir.

707 question. You state that you are familiar with the system of Government survey of land in the Indian Territory?

Answer. Yes, sir.

708 question. Describe what you know about that; take your time and be just as full as you can.

Answer. The land is divided into ranges and townships, each township running north of a base line, and each range runs east of the Indian meridian; the townships are divided into sections and the sections into quarter sections. At the corner of each township is an iron post, which is marked in plain letters and figures with the number of the township and range it is located in, and at the corner of each section is a stone—when it is a prairie it is a stone marked with the number of miles from the township line east and north; when in the timber the witness trees are marked with the section, range, township, etc.

709 question. Is there not some law against changing these boundaries?

Answer. It is $250 fine for moving or destroying any of these corner stones or iron posts; it is printed on the iron posts.

710 question. Are there any other physical boundaries?

Answer. At each half mile from the cornerstone at the corner of each section is a quarter stone marked ¼, and you can tell
387 when you are at the half section line. Then, in addition to these posts and stones, you find holes dug in the ground where there is no timber—if it is a section corner there are four holes in the ground—if a half section, one hole on each side of the

stone running in the direction the section line is running; if it is north, there is one hole on the south and one on the north side of the stone.

711 question. I show you a paper containing resolutions; what is it, and tell us what you know about it?

Answer. It is a declaration adopted at the Delaware council October 11, 1898, by the Delaware council and members of the business committee and signed by the chairman and secretary of the council.

712 question. Who is that business committee?

Answer. It is composed of five men appointed by the Secretary of the Interior—Henry Armstrong, John Secondine, George Bullette, John Young, Littlejohn Sarcoxie.

713 question. They are appointed by the Secretary of the Interior of the United States of America to act as a business committee for the Delaware nation?

Answer. They act as the business committee for the Delawares.

714 question. Were any others present besides the council and the Delaware business committee?

Answer. Yes; a great many others.

715 question. How did they happen to come there?

Answer. They were called together by the business committee.

716 question. Has the committee any way of calling the people together when there is anything to be adopted at the council?

Answer. They notify certain of the Delawares in each locality to meet at a fixed time and a fixed place where they all meet.

717 question. You mean notify heads of families?

Answer. Yes, sir.

718 question. And each head of a family is notified in advance?

Answer. As many as can be.

719 question. Does this notification state the object of the meeting?

Answer. Yes, sir.

720 question. How many heads of families were present when this declaration was adopted by the council?

Answer. About 150, I should say.

721 question. Were you there?

Answer. Yes, sir.

722 question. Where was this meeting held?

Answer. At Bartlesville, Ind. T.

(Counsel for the complainants offers this declaration above referred to in evidence, and same is marked "Complainants' Exhibit HHHHHH.")

723 question. I show you this book of record, and ask you what that is. This book is called what?

Answer. This is a book bound in leather, containing on the first page a copy of Complainants' Exhibit HHHHHH, and it also contains the following record, namely, the name of each Delaware Indian as it appears on the register made February 18, 1867, by John G. Pratt, the former Delaware Indian agent. It contains also a

record of each Delaware who was on that register who is living, and each Delaware that was on that register who is dead; also a record of the children of each Delaware on that record born since the record was made and living on the 4th of August, 1898;
388 and it contains each grandchild or other heirs of a deceased Delaware whose name appeared upon Mr. Pratt's register. It contains likewise the age of each person living whose name appeared on that register, and it contains a witness to the mark or signature of each person living whose name appears upon Mr. Pratt's register, and also the day upon which the signature was made.

724 question. Did you witness any of these signatures?

Answer. I witnessed all except about fifteen—at least, I witnessed all those to whom my signature appears as a witness.

725 question. State how this book was gotten up?

Answer. I went to each person with the book and they put down their names in my presence, and I asked each of them the questions sufficient to give me the information that appears set out in the book.

726 question. When you asked these questions did you get the information which is set out in this book from each owner or occupant of a tract of land?

Answer. Yes, sir.

727 question. I notice that the book does not contain a complete record of the number of acres in cultivation in possession of each person, and the acres inclosed in the possession of each person, and the number of acres not inclosed or adjacent to each person, and that there is also no record of the section, range, or township. Why was this information left out?

Answer. I prepared that information later, and it is contained in the exhibits that were received in evidence to-day and on my former examination.

728 question. I notice that there appears to be other witnesses to these names besides yourself; are these witnesses in Washington?

Answer. No, sir.

729 question. Where are they?

Answer. They are in the Cherokee nation, Ind. T.

730 question. Were these people whose names are set forth in this book acquainted with this suit in which your evidence was being taken?

Answer. Yes, sir.

731 question. And were they in harmony with it?

Answer. Yes, sir.

732 question. Did they understand what part they were taking in the suit?

Answer. Yes, sir.

733 question. What part do they suppose they take in this suit?

Answer. The complainants.

734 question. They knew that they were not being sued?

Answer. Yes, sir.

735 question. Do they understand that they are going to have land taken away from them or given to them?

Answer. They understand that they are going to get more land.

736 question. Do you understand what I mean when I said complainants?

Answer. I understand that they are the parties suing for the land.

737 question. Who paid your expenses for obtaining this record which contains this information about which you have just testified?

Answer. Mr. Richard C. Adams.

(Counsel for complainants offers said book in evidence, and same is marked "Complainant's Exhibit IIIII.")

It is hereby stipulated that the examination of Horace M. 389 Adams be suspended and that the deposition of Mr. Ithemar P. Berthrong be taken in this suit, and that the cross-examination of the witness, Horace M. Adams, proceed after the deposition of the said Berthrong shall have been completed.

HORACE M. ADAMS.

DISTRICT OF COLUMBIA, *ss:*

I, Harry H. Hollander, a notary public in and for the District of Columbia, certify that at the time and place aforesaid Horace M. Adams, a witness on behalf of the plaintiffs in the above-entitled cause, was sworn by me before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and that the answers were taken down in my presence, and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 2d day of January, 1901.

HARRY H. HOLLANDER,
Notary Public.

Continuation of deposition of Horace M. Adams, a witness produced, sworn, and examined at the hour of 2:30 p. m. on the 19th day of February, 1901, at Muscogee, Indian Territory, before the undersigned notary public for the northern district of the Indian Territory in the above-entitled cause.

Present on behalf of complainants, Kenneth S. Murchison, Esq., of counsel.

Present on behalf of defendants, William T. Hutchings, Esq., attorney.

And thereupon said HORACE M. ADAMS was cross-examined by counsel for defendants and testified as follows in answer to interrogatories:

Question. What proportion of the living Delawares who claim rights in the Cherokee nation have you named in describing the lands claimed by them in your testimony in chief?

(Objected to by counsel for complainants for the reason that the question is irrelevant and immaterial.)

Answer. I didn't try to get the proportion.

Question. Have you mentioned the names of all the Delawares who have made or own farms or improvements in the Cherokee nation?

(Objected to for the reason that the question is irrelevant and immaterial.)

Answer. No, sir.

Question. Why did you mention some and not mention all?

(Objected to by counsel for complainants because the question is irrelevant and immaterial.)

Answer. There were a few that didn't feel like taking part in the suits.

Question. Did you know of those you mentioned what amount of land they held for each member of the family?

Answer. No, sir.

Question. In speaking of their having so much land, as designated on the map or maps in evidence, have these people moved their fences on section lines or are they merely claiming the land within the section lines and not all within their inclosures?

(Objected to as irrelevant and immaterial.)

390 Answer. Some of them have moved their fences and some of them have not.

Question. Then do not most of the improvements lie irregularly and not on section lines?

(Objected to as irrelevant and immaterial.)

Answer. Yes, sir.

Question. When the Delawares made ther improvement originally did they not improve places just as other Cherokee citizens did—inclosing and cultivating just as much land as they were able to or were inclined to?

(Objected to as irrelevant and immaterial.)

Answer. Yes, sir.

Question. Did they not preserve what is called in the Cherokee law the quarter of a mile limit, and comply in all other respects, including improvements, with the laws and customs prevalent at the time amongst native Cherokees?

Answer. Yes, sir.

Question. I notice that you speak of a certain resolution which was passed by the Delaware council. What was this council and how was it composed?

Answer. It was composed of the Delaware business committee and

the heads of families of the Delawares; they had a chairman and secretary appointed by the people there at the council.

Question. This council was selected, was it not, by a convention of the Delaware people for the purpose of conducting such unsettled business of the tribe as was peculiar to the Delawares and about which the Cherokee nation was not concerned?

Answer. Yes, sir.

Question. Did not the Delawares participate at all times in the elections of members to the council and the election of chief of the nation and exercise all other public functions which any native Cherokee exercised after they were incorporated into the Cherokee nation?

Answer. Yes, sir.

Redirect examination by Mr. MURCHISON, counsel for complainants:

Question. The names mentioned by you of Delawares holding lands are heads of families?

Answer. Yes, sir.

Question. Then the land held by each individual mentioned by you are held for the individual and his family?

Answer. Yes, sir.

Question. So that the number of names that are actually mentioned in your deposition does not by any means represent the proportion of the Delawares' interest in the lands described?

Answer. No, sir.

HORACE M. ADAMS.

UNITED STATES OF AMERICA, }
Indian Territory, Northern District. }

I, Clara Mitchel Wood, a notary public in and for the northern district of the Indian Territory, certify that at the time and place aforesaid Horace M. Adams, a witness on behalf of the plaintiff in the above-entitled cause, was sworn by me before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and that the answers were
390½ taken down by me and his deposition as above set forth was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 19th day of February, A. D. 1901.

CLARA MITCHEL WOOD,
Notary Public.

390½–414 PLAINTIFFS' EXHIBITS BB TO ZZ, INCLUSIVE, AND AAA TO FFFFF.

These exhibits are separate maps and descriptions of land in the Cherokee nation in possession of individual Delawares and claimed to be occupied and improved by them, and, taken altogether and in connection with the testimony of Horace Adams, and in connection with the stipulation specifically setting forth the land occupied by each individual Delaware, which stipulation is dated December 10, 1902, the particular land occupied by each Delaware and the aggregate amount of land occupied by all the Delawares can be determined.

These exhibits are on file in full in the Court of Claims, but, by consent, are not printed here in full.

415 PLAINTIFFS' EXHIBIT HHHHH.

INDIAN TERRITORY, *Oct.* 11, 1898.

We, the undersigned, Delaware Indians residing in the Cherokee nation, being the survivors of the Delaware Indians whose names appear upon the register of Delaware Indians made in February, 1867, by John G. Pratt, the United States Indian agent for the Delaware Indians, and on file in the Department of the Interior of the
416 United States, and known as the "Delaware register," and the next of kin and heirs at law of such registered Delaware Indians who have since deceased, do hereby certify:

1. Whereas in and by a certain agreement made the 8th day of April, 1867, between the Cherokee nation and the Delaware tribe of Indians, the Cherokees, parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions therein mentioned, among other things, agreed:

"To sell to the Delawares, for their occupancy, a quantity of land east of the line of 96° west longitude, in the aggregate equal to one hundred and sixty acres for each individual of the Delaware tribe who has been enrolled upon a certain register made February 18th, 1867, by the Delaware agent and on file in the Office of Indian Affairs, being the list of Delawares who elect to remove to the Indian country, to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto. *And the selections of the lands to be purchased by the Delawares may be made by the said Delawares in any part of the said Cherokee reservation east of the line of 96° not already selected and in possession of other parties.*"

And whereas the said Delawares made the said payments and fulfilled all of said conditions:

And whereas the number of said Delawares enrolled upon the said register, being the list of Delawares who elected to remove to the Indian country, including the names of other Delawares added with the consent of the Delaware council within one month after the signing of said agreement, of those desiring to be added thereto, as provided by said agreement, was 985, making the number of acres of land sold by the Cherokees and to be selected by the Delawares as aforesaid 157,600.

Now, therefore, we, Delaware Indians as aforesaid, do hereby certify that the selections of land made by the said registered Delaware Indians and the heirs of such as died before selections were made are as herein appears and is set forth.

2. Whereas by the 25th section of the act of Congress approved June 28th, 1898, entitled "An act for the protection for the people of the Indian Territory, and for other purposes," it was provided:

"Before any allotments shall be made of lands in the Cherokee nation there shall be segregated therefrom, by the commission heretofore mentioned, in separate allotments, or otherwise, one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee nation under agreement of April 8th, 1867."

Now, therefore, the said Delaware Indians respectfully request that the one hundred and fifty-seven thousand six hundred acres of land selected by the said Delawares as aforesaid and herein described and set forth be segregated from the other lands in the Cherokee nation, in pursuance of provisions of the said section of the said act.

3. Whereas by an agreement dated August 4th, 1898, and duly acknowledged on the said date before a court of record—said agreement being in confirmation of previous agreements of the same nature—and of other like agreements with individual Delawares, Richard C. Adams and John Bullette are made, constituted, and appointed the true and lawful attorneys of the said Delawares, and of each of them, irrevocable, for the purposes therein mentioned,
417 including the purpose of representing the said Delawares in any and all controversies with the said Cherokees over their respective rights and of bringing to a determination all questions which were or might be in controversy concerning said rights.

And whereas the said Richard C. Adams and John Bullette, under and by virtue of said agreements, and as compensation for the services rendered and to be rendered by them, under and under the authority of the said agreements, are entitled, among other things, for themselves and their assigns, to 25,640 acres of said 157,600 acres of land, as well as to an equal proportion of the lands to which the said Delawares may be entitled in addition to said 157,600 acres, by virtue of their communal rights or rights as citizens of the said Cherokee nation.

Now, therefore, we, the said Delaware Indians, do hereby further ratify and confirm the said agreements with said Richard C. Adams and John Bullette, and we do hereby certify that the said Richard

C. Adams and John Bullette have full power and authority on our behalf, and on behalf of all of said Delaware Indians, to act for and represent us in all matters of controversy between the said Delawares and the said Cherokees, and in all matters relating to the said lands—as well the lands to which we may be entitled by virtue of our communal rights or rights as citizens of the Cherokee nation, as the said 157,600 acres of land purchased by the said Delawares as aforesaid—and in all matters relating to the selection of said lands or the establishing of the title of the said Delawares thereto, and in all matters relating to the recovery of our share and the share of the said Delaware Indians in and to the communal funds of the said Cherokee nation, and in all matters relating to the claim, or claims, of the said Delaware Indians against the United States Government, and that, as to any and all of such matters, and as to any and all other matters mentioned or referred to in the said agreements with said Richard C. Adams and John Bullette, the said Richard C. Adams and John Bullette have as full power and authority in the premises, on our behalf, and on behalf of the said Delawares, as we, or the said Delawares, might or would have if we were personally present and acting for ourselves, and that the said power and authority so granted to and conferred upon the said Richard C. Adams and John Bullette, as aforesaid, is coupled with an interest and irrevocable.

The foregoing certificate or declaration, which was read and interpreted and is a part of the register, is hereby adopted by the Delaware council and authorized to be a part of the record.

COL. JACKSON, *Chairman.*
WM. ADAMS, *Sec.*

Deposition of Henry C. Meigs, for Claimants, Taken at Muscogee, Ind. T., on the 2d Day of November, A. D. 1900.

Claimant's counsel, M. E. Harby; defendants' counsel, Wm. T. Hutchings.

Direct examination by M. E. HARBY:

Question. Will you tell me what is your occupation, how old you are, and where you reside?

418 Answer. Well, I am 59 years old this month; I live at Fort Gibson, Creek (Cherokee?) nation, and my occupation has been a clerk in a store most of the time. I am a Cherokee citizen; I was born at Park Hill, Ind. T.

Question. Have you any interest in this case, Mr. Meigs?

Answer. No, sir.

Question. Do you know where you were in the month of November, 1866?

Answer. In Tahlequah.

Question. What was your business in Tahlequah at that time?

Answer. I was a clerk in a store there.

Question. There is a part of the constitution of the Cherokee nation which reads as follows: "Sec. 10. The national council may propose such amendments to this constitution as two-thirds of each branch may deem expedient, and the principal chief shall issue a proclamation directing the civil officers of the several districts to promulgate the same as extensively as possible within their respective districts at least six months previous to the next general election, and if at the first session of the national council after said general election two-thirds of each branch shall by ayes and noes ratify said proposed amendments, that they shall be valid to all intents and purposes as parts of this constitution, provided that said proposed amendments shall be read on three several days in each branch, as well when the same are proposed as when they are ratified." You are familiar with this section of the constitution?

Answer. Yes, sir.

Question. Now, there is in the Cherokee law books something called amendment to the constitution, which is marked "Exhibit S" in this case. I will read you section 5 of amendments to article 3: "No person shall be eligible to a seat in the national council but a male citizen of the Cherokee nation who shall have attained to the age of 25 years and who shall have been a *bona fide* resident of the district in which he may be elected at least six months immediately preceding said election. All native-born Cherokees, all Indians and whites resident members of the nation by adoption, and all freedmen who have been liberated by voluntary act of their former owners or by law, as well as every colored person who was in the country at the commencement of the rebellion and are now residents therein or who may return within six months from the 19th day of July, 1866, and their descendants who reside within the limits of the Cherokee nation, shall be taken and deemed to be citizens of the Cherokee nation." You are familiar with that section?

Answer. Yes, sir.

Question. Do you remember a number of people meeting at Tahlequah about November 26, 1866?

Answer. Yes, sir.

Question. What was the purpose of that meeting?

Answer. For the ratifying of the amendments of the constitution.

Question. The amendment which I read was proposed to that meeting?

Answer. Yes, sir.

Question. How long before this meeting was called did the national council meet?

Answer. It met the first Monday in October. These amendments of the constitution changed time to November.

419 Question. At the time the national council met, October—in the month of October—the constitution had not been amended at that time?

Answer. No sir.

Question. When these people met in November, was any notice given them to meet?

Answer. Yes, sir; I think there was. I don't remember seeing any notice, but I think there was.

Question. In what manner was notice given?

Answer. I suppose by sending out messages.

Question. Were the proposed amendments to the constitution made known to the public, or were they simply called to meet at Tahlequah?

Answer. I suppose it was the object in calling them together. Provision was made for public cooks.

Question. Were copies of the amendment sent out to the people?

Answer. I don't remember about that.

Question. The original constitution says that when amendments to the constitution are proposed and voted on by two-thirds of each branch of the national council the principal chief shall issue a proclamation directing the officers of the several districts to promulgate the same at least six months previous to the next general election. Was that done in this case?

Answer. I don't know of anything of that kind being done.

Question. There wasn't any six months' notice given at all?

Answer. No, sir; not to my recollection; there was about two or three weeks; it couldn't have been more than two or three weeks; the council met in October and this was in November.

Question. And it was at the meeting of the council previous to the meeting of these people in November that these proposed amendments were voted on?

Answer. Yes, sir.

Question. Is it true that whatever the notice was given was actually given between the meeting of the council in the early part of October and the meeting of these few people on the 26th day of November?

Answer. Yes, sir.

Question. This notice that was sent out to the people—was that a notice saying that there was to be a vote on amendments to the constitution, or did the notice say what the amendments were?

Answer. As well as I remember it was simply a notice of meeting to adopt amendments to the constitution.

Question. And didn't say what the amendments were?

Answer. No, sir.

Question. When these people met, whereabouts in Tahlequah did they meet?

Answer. Right there in Tahlequah in the public square in the open air.

Question. And did anybody preside over them?

Answer. Yes, sir.

Question. Who?

Answer. Why, let's see; I forget just now, but it was Riley Keys, and I believe Gritts and Col. Ross. I can't say which was president.

Question. These people you mentioned were head men?

Answer. Yes, sir.

Question. Well, what did they do at the convention with regard to these amendments.

420 Answer. They read the treaty of '66 and they read those proposed amendments making provision for freedmen—that what you read.

Question. Did the people that were there vote on them?

Answer. They didn't have a vote. There was no votes counted; they just accepted it, the way I understood it.

Question. You mean to say that some of the people sitting round gave the Cherokee exclamation which means "all right"?

Answer. Yes, sir.

Question. The body standing immediately around the stand said "all right" in Cherokee?

Answer. Yes, sir; they did.

Question. What else did they do?

Answer. That's about all I remember of them doing.

Question. There wasn't anything else done, was there?

Answer. Not that I know of.

Question. After that they had a barbecue, didn't they?

Answer. Yes, sir; they had public cooks there to feed the public, paid by the country; the country made provision.

Question. This evidence that you have given to-day as to the meeting in which those amendments were adopted is well known in the Creek [Cherokee?] nation, is it not?

Answer. Yes, sir.

Question. Are there any other persons living besides yourself who can testify to these facts which you have testified about?

Answer. Yes; there ought to be a good many yet. Houston Benge, I think, was interpreter.

Question. He is sick now, isn't he?

Answer. I don't know; I ain't seen him for several days.

Question. The fact that these amendments were adopted in the meeting you testified about is not disputed at all, is it?

Answer. No, sir.

Question. Do you know of any other fact that is of interest in this case?

Answer. Not that I can think of.

It is hereby agreed and stipulated between M. E. Harby, counsel for the plaintiffs, and Wm. T. Hutchings, counsel for the defendants, that the foregoing is the testimony of Henry C. Meigs, and that the same has been regularly and duly taken, and we hereby waive the signing of said testimony by the said Meigs and consent that the same, unsigned, form a part of the record in this case and be taken as a part of the testimony and evidence as being duly and properly taken in this case, and we hereby waive all rules or statutes to the contrary notwithstanding.

Dated November 2, A. D. 1900, at Muskogee, Ind. T.

M. E. HARBY.
WILLIAM T. HUTCHINGS.

CITY OF MUSKOGEE, }
Indian Territory. }

I, Clara M. Wood, a notary public within and for the northern district of the Indian Territory, residing at Muskogee, do certify that the aforesaid Henry C. Meigs was duly sworn by me, and that the foregoing questions were put to him in my presence and the foregoing answers answered by him in my presence and taken down by me, and that the same is the testimony given by him,
421 and that the foregoing stipulation was entered into in my presence between the said Harby and Hutchings, who signed the same in my presence.

Dated at Muskogee this 2d day of November, A. D. 1900.

[SEAL.] CLARA M. WOOD,
Notary Public.

Deposition of David Muskrat, for Claimants, Taken at Muskogee, Ind. T., on the 2d Day of November, A. D. 1900.

Claimants' counsel, M. E. Harby; defendants' counsel, Wm. T. Hutchings.

The said Muskrat is examined through John Henry Dick, interpreter, the said Dick being first duly sworn to truthfully translate to the said Muskrat such questions as shall be put to him and to truthfully translate the answers thereto. Examination is taken pursuant to stipulation by Clara M. Wood, a notary public in and for the northern district of the Indian Territory.

Question. How old are you, where do you live, and what is your occupation?

Answer. Fifty-four years old; residence, Flint district, Cherokee nation; my occupation is that of a farmer.

Question. Are you a native-born Cherokee?

Answer. Yes, sir.

Question. Have you any interest in the result of this action?

Answer. I have no interest except as a citizen of the Cherokee nation.

Question. Where were you in the month of November, 1866?

Answer. I was at home and also at Tahlequah.

Question. Were you at Tahlequah on the 26th day of November, 1866?

Answer. I can't say as to the day of the month, but I was present there at that meeting in Tahlequah.

Question. Do you refer to a meeting where it was proposed to amend the constitution?

Answer. Yes, sir.

Question. How did the people that were there happen to come together?

Answer. My recollection is that at that time it was customary

with the chief to notify the district officers; that is, the judge and the clerk of the district.

Question. Were the people notified in this manner on this occasion?

Answer. That is my recollection.

Question. How long before that meeting were they notified?

Answer. To the best of my recollection about one or two weeks—a very short time

Question. How many of them met together on the 26th day of November?

Answer. They estimated the men to number about 300 or a little more; including the women and children, it made a number in the neighborhood of a thousand..

Question. What did they do when they met at Tahlequah?

Answer. They read the treaty of 1866, together with the amendment of the constitution of the Cherokee nation.

Question. Who read them?

422 Answer. I don't remember the person who read them.

Question. Who presided over that meeting?

Answer. My recollection is it was Riley Keys.

Question. Was Colonel Ross there at all?

Answer. My recollection is that he was present. I was not a member of the council.

Question. Were the proposed amendments read to the people?

Answer. That's my recollection.

Question. How did they vote on it, by word or mouth or by writing vote?

Answer. By mouth. There was no writing.

Question. Do you know how the method of voting is prescribed by the Cherokee laws?

Answer. I think so.

Question. Was that method followed out in this case?

Answer. No.

Question. There is printed in one of the law books something called amendments to the constitution, and it appears as Exhibit S in this case. Section 5 of amendments to article 3 of that constitution prescribes that native-born Cherokee Indians, whites resident members of the Indian Territory by adoption, freedmen who have been liberated by voluntary act of their former owners or by law, every colored person who was in the country at the commencement of the rebellion and is now residing therein or who may return within six months from July 19, 1866, and their descendants who reside within the limits of the Cherokee nation, shall be deemed to be citizens of the Cherokee nation. Was this one of the amendments passed by the meeting held at Tahlequah in November, 1866, which you have mentioned in this examination?

Answer. Yes, sir.

Question. Did you hold any office in the Cherokee nation at that time?

Answer. No, sir.

Question. Have you held any since? If so, state what.

Answer. I was elected to the council in 1879; after the expiration of my term in the council, I was elected as a member of the executive council; after serving my time out as a member of the executive council, I was elected solicitor of Flint district; after the expiration of that term, I was elected to the senate. I was elected to the senate again.

It is hereby agreed and stipulated between M. E. Harby, counsel for the plaintiffs, and Wm. T. Hutchings, attorney for the defendants, that the foregoing is the testimony of David Muskrat, and that the same has been regularly and duly taken, and we hereby waive the signing of said testimony and evidence as being duly and properly taken in this case, and we hereby waive all rules or orders to the contrary notwithstanding.

Dated November 2, A. D. 1900, at Muskogee, Ind. T.

M. E. HARBY.
WILLIAM T. HUTCHINGS.

CITY OF MUSKOGEE, }
Indian Territory. }

I, Clara M. Wood, a notary public within and for the northern district of the Indian Territory, residing at Muskogee, do
423 certify that the aforesaid David Muskrat was duly sworn by me, and that the foregoing questions were put to him in my presence and the foregoing answers made by him in my presence, and taken down by me, and that the same is the testimony given by him, and that the foregoing stipulation was entered into in my presence between the said Harby and Hutchings, who signed the same in my presence.

Dated at Muskogee, November 2, 1900.

[SEAL.] CLARA M. WOOD,
Notary Public.

Stipulation.

Whereas the testimony of H. C. Meigs and David Muskrat has been duly taken in this cause on behalf of the plaintiffs, on November 2nd, 1900, before Clara M. Wood, a notary public, pursuant to stipulation between the counsel thereto; and

Whereas the counsel for the plaintiffs declares his intention of calling as witnesses Doc Cunningham, Daniel Gritts, Joab Scales, and Houston Benge; and

Whereas the parties hereto desire to shorten the record as much as possible, it is, in consideration of the premises, stipulated and agreed by the counsel for the defendants as follows:

First. That said Doc Cunningham, Daniel Gritts, Joab Scales, and Houston Benge are natives of the Cherokee nation and are Cherokee Indians.

Second. That they are all reputable men, well known, and worthy of being believed.

Third. That the said Doc Cunningham, Daniel Gritts, Joab Scales, and Houston Benge will testify to the same effect and in the same manner and of the same facts as the joint testimony of the said Meigs and Muskrat.

Fourth. That the said testimony of the said Meigs and Muskrat may be used upon the trial and argument of this cause as though it were the testimony also of the said Doc Cunningham, Daniel Gritts, Joab Scales, and Houston Benge.

Witness my signature this 8th day of November, 1900, in the city of Muscogee, Indian Territory.

WILLIAM T. HUTCHINGS,
Attorney for Defendants.

INDIAN TERRITORY, }
City of Muscogee, Northern District. }

Be it known that on this 8th day of November, 1900, before me Clara M. Wood, a notary public within and for the northern district of the Indian Territory, duly appeared William T. Hutchings, known to me to be the attorney for defendants and the person mentioned in the foregoing stipulation, and he duly signed the same in my presence and acknowledged to me that he signed the same.

Witness my hand and seal this 8th day of November, 1900.

[SEAL.] CLARA M. WOOD.

424 *Deposition of Ithamar P. Berthrong, for Claimants, Taken at Washington, D. C., on the 29th Day of December, A. D. 1900.*

Claimants' counsel, M. E. Harby; defendants' counsel, John J. Hemphill.

Mr. ITHAMAR P. BERTHRONG, having been produced on behalf of the complainants, was by me, the undersigned notary public, duly sworn, before any interrogatory was but to him, to tell the truth, the whole truth, and nothing put the truth in relation to the said cause, and thereupon deposed and said that his name is Ithamar P. Berthrong, and that his occupation is that of a topographical draftsman; that he is 47 years of age and that his place of residence is Washington, D. C.; that he has no connection with any of the parties to this suit and has no interest in the result of same.

By Mr. HARBY:

1 question. Mr. Berthrong, where are you employed?

Answer. I am employed in the General Land Office.

2 question. Of the United States Government, at Washington, D. C.?

Answer. Yes, sir.

3 question. How long have you been employed there?

Answer. Since 1882.

4 question. What are your duties?

Answer. My duties are to compile and draw State maps—that is, of public land, States and Territories.

5 question. And you have been engaged in that business since 1882?

Answer. Yes, sir.

6 question. Will you please look at this map I show you and tell us what you know about it?

Answer. It is a photolithographic copy of a map I made, compiled, and drew of the Cherokee nation. It was also colored by me.

7 question. From what information did you get the data that enabled you to draw this map of the Cherokee nation?

Answer. From the official map compiled in the office of the United States Government.

8 question. What do these red plats on this map represent?

Answer. They represent various tracts of land.

9 question. In whose possession?

Answer. It represents land that was described on plats that were given me.

10 question. From what plats or maps did you obtain the information that enabled you to color these various plats on this map which you testify you drew?

Answer. From those plats that were received in evidence in the deposition of Mr. Horace M. Adams in this case on his direct examination.

(Counsel for complainants here offers the map in evidence and it is marked "Complainants' Exhibit JJJJJ."

Counsel for defendants objects to the testimony of this witness relating to this map and to the introduction of the map as being incompetent and relating to something over which the Court of Claims has no jurisdiction, and also upon the ground that the map was prepared simply from data furnished the witness by another party, as to the correctness of which he knows nothing.)

425 11 question. You don't know where these maps were prepared or where the information was obtained by Mr. Horace Adams?

Answer. No, sir; I don't know anything about that.

12 question. I notice that this map, "Complainants' Exhibit JJJJJ," is divided up into a number of small squares and large squares; what do the small squares represent?

Answer. They represent quarter sections.

13 question. And what do the larger squares represent?

Answer. Townships.

14 question. I notice on the map a quantity of small numbers; what do they represent?

Answer. The numbers of the sections which are made up of the quarter sections.

15 question. And what do the large numbers represent?

Answer. The numbers of the townships and ranges.

16 question. How do you know that your drawing shows accurately the sections, quarter sections, townships, and ranges?

Answer. Because they were measured by scale and by comparison with the official map of the Indian Territory compiled in the Land Office of the United States Government.

ITHAMAR P. BERTHRONG.

Counsel for the defendants announces that he was not ready to go on with the cross-examination of the witness at this time, and that he will cross-examine the witness at a future day.

It is therefore stipulated between counsel that at some future day the cross examination and redirect examination may be proceeded with, and it is expressly stipulated and agreed that the cross-examination of the witness is adjourned until such time as the witness again takes the stand.

DISTRICT OF COLUMBIA, *ss:*

I, Harry H. Hollander, a notary public in and for the District of Columbia, certify that at the time and place aforesaid, Ithamar P. Berthrong, a witness on behalf of the plaintiffs in the above-entitled cause, was by me sworn before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and that the answers were taken down in my presence, and his deposition, as above set forth, was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 3d day of January, A. D. 1901.

[SEAL.] HARRY H. HOLLANDER,
Notary Public.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

426 A letter marked "Cherokee R 46," written by W. P. Ross and others, Cherokee delegates at Washington, D. C., February 13, 1867. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee R 326," written by H. D. Reese to Hon. N. C. Taylor, Washington, D. C., July 30, 1868. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee D 53," written by Lewis Downing and others to Hon. N. C. Taylor, Washington, D. C., January 25, 1869.

This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee D 253," written by Lewis Downing and others to Hon. W. T. Otto, Washington, D. C., May 5, 1869. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee J 293," together with inclosures, sent by J. D. Cox, secretary, to Hon. E. S. Parker, Washington, D. C., May 21, 1869. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee D 909," and inclosures, written by H. D. Reese and others to Hon. N. C. Taylor, Washington, D. C., January 30, 1868. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter entitled "Cherokee W 686," and inclosures, written by James Wortham to Hon. N. C. Taylor, Washington, D. C., January 28, 1868. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter written by the Hon. N. C. Taylor to H. D. Reese, chairman of the Cherokee delegation, written at the Department of the Interior, office of Indian Affairs, August 7, 1868. This letter is on file in the office of the Commissioner of Indian Affairs.

A letter on file in the office of the Commissioner of Indian Affairs, indorsed as follows:

"Delaware C 864, Department of the Interior. Received February 21, 1872. Dated February 21, 1872. From Captain John Connor and others, Delaware Indians. Subject: Making complaint as to their treatment by the Cherokees."

A report made by the Hon. James McLaughlin, of the Interior Department, dated about July 1, 1897, with regard to the frauds relating to the admission of freedmen into the Cherokee nation. The Hon. James McLaughlin supervised from April 18, 1897, to the month of July, the payment to the freedmen of the $900,000 which was called the Cherokee freedmen payment.

He made a report of what he did and reviewed certain frauds relating to citizenship in the Indian Territory, particularly in the Cherokee nation. This is the report to which your petitioners refer.

Dated, New York, February 4, 1899.

Respectfully, WALTER S. LOGAN,
Attorney for the Plaintiffs.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior requiring him to transmit to said court, to be used in the
427 above case, copies of the following documents and the following information, to wit:

A letter marked "Delaware 1. 320," written by F. Johnson to Hon. Wm. P. Dole, dated "Delaware agency, Kansas, Sept. 13, 1863," which is on file in the office of the Commissioner of Indian Affairs.

Two letters, each marked "Delaware 1. 379," written by F. Johnson to Hon. Wm. P. Dole, dated "Delaware agency, Kansas, November 30, 1863," both of which are on file in the office of the Commissioner of Indian Affairs.

A statement giving the number of the receipts on file for the moneys disbursed by John G. Pratt, Delaware Indian agent, to the Delaware Indians, which moneys were sent to him to be paid to the Delawares in return for their Kansas land, which receipts are on file in the office of the Commissioner of Indian Affairs. Your petitioners do not seek a list of the receipts; they ask only for the number of them on file.

Dated New York, February 8, 1899.

WALTER S. LOGAN,
Attorney for the Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *March* 2, 1899.

The honorable Chief Justice of the Court of Claims.

SIR: Pursuant to the order of the Court of Claims, dated February 10, 1899, requesting this department to furnish said court, to be used in the case of The Delaware Indians *et al. v.* The Cherokee Nation, numbered 21139, now pending in said court, "any information or papers (or duly authenticated copies of the same, if preferred) supposed to be on file in your (this) department, set forth in the accompanying rule allowed by the court," I have the honor to transmit herewith duly certified copies of the papers on file in the office of the Commissioner of Indian Affairs, as stated by the report of said Commissioner, excepting "Delaware C 864, 1872, dated February 1, 1872, from Capt. John Connor and others, Delaware Indians, making complaint as to their treatment by the Cherokees," for the reason that the same is not on file in his office, and said letter can not be found in the files of the office of the Secretary of the Interior.

Attention is also called to the statement made by the Commissioner, giving the reason for not furnishing a number of the receipts "for moneys disbursed by John G. Pratt, Delaware Indian agent, to the Delaware Indians," which, he says, is due to the fact that the accounts of said agent are filed away in the cellar of the building in which the office of the Commissioner of Indian Affairs is located, and are inaccessible. The Commissioner also suggests that the original receipt rolls are on file in the office of the auditor for the

Interior Department and that said officer is the proper person to furnish copies thereof.

A copy of the report of the Commissioner of Indian Affairs and said order of the court are herewith inclosed.

Respectfully, E. A. HITCHCOCK, *Secretary.*

428 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 28, 1899.

The honorable Secretary of the Interior.

SIR: The office is in receipt, by department reference of the 13th instant, of two communications, dated February 10, 1899, from Mr. John Randolph, assistant clerk of the Court of Claims, requesting to be furnished with certain official papers, set forth in the accompanying rules of said court, to be used as evidence on the trial of the cause No. 21139, "The Delaware Nation *v.* The Cherokee Nation," now pending in said court.

In partial compliance with said request, I have the honor to transmit herewith duly certified copies of the following-described papers:

(1.) Letter marked "Cherokee R 46, 1867," from W. P. Ross *et al.*, Cherokee delegates, Washington, D. C., February 13, 1867.

(2.) Letter marked "Cherokee R 326, 1868," from H. D. Reese to Hon. N. C. Taylor, Commissioner of Indian Affairs, Washington, D. C., July 30, 1868.

(3.) Letter marked "Cherokee D 53, 1869," from Lewis Downing *et al.* to Hon. N. C. Taylor, Commissioner of Indian Affairs, January 25, 1869.

(4.) Letter marked "Cherokee D 253, 1969," from Lewis Downing to Hon. W. T. Otto, acting Commissioner of Indian Affairs, Washington, D. C., May 5, 1869.

(5.) Letter marked "Cherokee I 293, 1869," with inclosures from Hon. J. D. Cox, Secretary of the Interior, to Hon. E. S. Parker, Commissioner of Indian Affairs, May 21, 1869.

(6.) Letter marked "Cherokee D 909, 1868," with inclosures from H. D. Reese *et al.* to Hon. N. C. Taylor, Commissioner of Indian Affairs, Washington, D. C., January 30, 1868.

(7.) Letter marked "Cherokee W 686, 1868," and inclosures from James Wortham to Hon. N. C. Taylor, Commissioner of Indian Affairs, January 28, 1868.

(8.) Letter dated August 7, 1868, from Hon. N. C. Taylor, Commissioner of Indian Affairs, to H. D. Reese, chairman of the Cherokee delegation.

(9.) Report dated July 2, 1897, by James McLaughlin, United States Indian inspector, of his supervision of the Cherokee freedmen payment made at Fort Gibson, Ind. T., by Special Agent James G. Dickson and D. M. Wisdom, United States Indian agent, respectively.

(NOTE.—This report is on file in the office of the Secretary of the Interior.)

(10.) Letter marked "Delaware J 320, 1863," from F. Johnson, United States Indian agent, Delaware agency, Kans., to Hon. Wm. P. Dole, Commissioner of Indian Affairs, dated September 13, 1863.

(11.) Letter marked "Delaware J 379, 1863," and inclosure from F. Johnson, United States indian agent, Delaware agency, Kans., to Hon. Wm. P. Dole, Commissioner of Indian Affairs, dated November 30, 1863.

The office is unable to furnish a certified copy of the letter marked "Delaware C 864, 1872," dated February 21, 1872, from Capt. John Connor and others, Delaware Indians, making complaint as to their treatment by the Cherokees, for the reason that said letter is not in the files of this office. In its appropriate place is a memo-
429 randum setting forth that said letter was withdrawn by the Secretary of the Interior February 27, 1872.

This office is also unable to furnish "a statement giving the number of the receipts on file for moneys disbursed by John G. Pratt, Delaware Indian agent, to the Delaware Indians, which moneys were sent to him to be paid to the Delawares in return for their Kansas lands," owing to the fact that the accounts of said agent are filed away in the cellar of this building in which the office is quartered and are inaccessible. It is respectfully submitted, however, that properly the Auditor of the Treasury for the Interior Department should be called upon to furnish said list, as the original receipt rolls are on file in his office, those in this office being merely duplicates.

The communications from the assistant clerk of the Court of Claims are herewith respectfully returned, and a copy of this letter is inclosed.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 28, 1899.

I, W. A. Jones, Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true and literal copies of the following-described official papers as the same appear on file in this office:

(1.) Letter marked "Cherokee R. 46, 1867," from W. P. Ross *et al.*, Cherokee delegates, Washington, D. C., February 13, 1867.

(2.) Letter marked "Cherokee R. 326, 1868," from H. D. Reese to Hon. N. C. Taylor, Commissioner of Indian Affairs, Washington, D. C., July 30, 1868.

(3.) Letter marked "Cherokee D. 53, 1869," from Lewis Downing *et al.* to Hon. N. C. Taylor, Commissioner of Indian Affairs, January 25, 1869.

(4.) Letter marked "Cherokee D. 253, 1869," from Lewis Downing to Hon. W. T. Otto, acting Commissioner of Indian Affairs, Washington, D. C., May 5, 1869.

(5.) Letter marked "Cherokee I. 293, 1869," with inclosures, from Hon. J. D. Cox, Secretary of the Interior, to Hon. E. S. Parker, Commissioner of Indian Affairs, May 21, 1869.

(6.) Letter marked "Cherokee D. 909, 1868," with inclosures, from H. D. Reese *et al.* to Hon. N. C. Taylor, Commissioner of Indian Affairs, Washington, D. C., January 30, 1868.

(7.) Letter marked "Cherokee W. 686, 1868," and inclosures, from James Wortham to Hon. N. C. Taylor, Commissioner of Indian Affairs, January 28, 1868.

(8.) Letter dated August 7, 1868, from Hon. N. C. Taylor, Commissioner of Indian Affairs, to H. D. Reese, chairman of the Cherokee delegation.

(9.) Report dated July 2, 1897, by James McLaughlin, United States Indian inspector, of his supervision of the Cherokee freedmen payment made at Fort Gibson, Ind. T., by Special Agent James G. Dickson and D. M. Wisdom, United States Indian agent, respectively. (Note: This report is on file in the office of the Secretary of the Interior.)

430 (10.) Letter marked "Delaware J. 320, 1863," from F. Johnson, United States Indian agent, Delaware agency, Kans., to Hon. William P. Dole, Commissioner of Indian Affairs, dated September 13, 1863.

(11.) Letter marked "Delaware J. 379, 1863," and inclosure, from F. Johnson, United States Indian agent, Delaware agency, Kans., to Hon. W. P. Dole, Commissioner of Indian Affairs, dated November 30, 1863.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

W. A. JONES,
Commissioner.

ROOMS OF CHEROKEE DELEGATION,
321 9TH ST., WASHINGTON CITY, D. C., *Feb. 13th*, 1867.

Hon. Lewis V. Bogy, Commissioner of Indian Affairs.

SIR: On behalf of the Cherokee nation we represent, we herewith offer to sell to the Government all of the Cherokee lands lying west of 96° west, containing eight or nine millions of acres.

If taken in a body, we would sell all lying between 96° and 99° for fifty cents an acre, and all west of 99° at twenty cents an acre.

The lands in question lie south of the southern boundary of Kansas, north of the Creek lands and Texas boundary, and east of the eastern boundary of New Mexico and part of Texas. The lands to be conveyed on the terms of the treaty of 19th of July, 1866, and the amounts paid for them invested in United States registered bonds.

We would prefer to dispose of the whole amount in a body at a smaller price than to have it picked and culled over, but are willing to enter into any fair arrangement for settling Indians thereon.

We desire to remain, very respectfully, your ob'd't servants,

WM. P. ROSS,
Prict. Chief.

RILEY KEYS,
JESSE BUSHYHEAD,
Cherokee Delegation.

WASHINGTON, D. C., *July 30th*, 1868.

Hon. N. G. Taylor, Commissioner of Indian Affairs.

SIR: Last year (1867) an arrangement was made between the Cherokees and the Delaware Indians by which the latter were received into the Cherokee nation as Cherokees, and were to pay a certain sum of money therefor to the Cherokees, to be placed in charge of the U. S. Gov't as other Cherokee funds. You will therefore please to inform us whether or not any funds have been placed to the credit of the Cherokees on account of the said arrangement between the Cherokees and Delawares, and if so, how much?

Very respectfully, your ob't s'v't,

H. D. REESE,
Chairman Cherokee Delegation.

431 WASHINGTON, *Jan. 25th*, 1869.

Hon. N. G. Taylor, Commissioner, Indian Office, Dept. of Interior.

SIR: The undersigned respectfully call your attention to articles of agreement made April 8th, 1867, between the Cherokee nation and the Delaware tribe of Indians, and request that we may be furnished with the roll of the Delawares made Feb. 18th, 1867, by the Delaware agent, and on file in your office, together with the names of such, if any, as were added to it within one month after the conclusion of said agreement, of 8th Ap'l, 1867, being together with a list of the Delawares who elected to remove to the "Indian country," so that we may know what amount of bonds held in trust for the Delawares are to be sold or transferred at their market value for the benefit of the Cherokee nation on account of lands purchased of the Cherokee nation for said Delawares; we also desire to be furnished with a copy of the last census of the Cherokee nation, and to be informed what amount the Delawares will contribute to the Cherokee national funds under the provisions of said agreement, and what steps, if any, have been taken to have the payments made to the Cherokee nation by the sale of the Delaware trust funds, or by the transfer thereof to the Cherokee nation by the united tribes.

And if these sales or transfers have not been made, we request that you will take all necessary steps to carry into effect the said agreement of Ap'l 8th, 1867, between the Cherokee nation and the Delawares.

Trusting that our requests will, without unnecessary delay, be attended to, we avail of this opportunity to assure you of the high respect with which

We are, sir, your ob't serv'ts,

LEWIS DOWNING,
P'l Ch'f Cherokee Nation.
H. D. REESE,
W. P. ADAIR,
SAM'L SMITH,
A. SCRAPER,
J. PORUM DAVIS,
Cherokee Delegation.

WASHINGTON CITY, D. C., *May* 5, 1869.

Hon. W. T. Otto, act. Commissioner Indian Affairs.

SIR: Application having been made to us by the representatives of the Shawnee nation now in Washington for lands, under the provisions of the 15th article of the treaty of 1866 between the United States and the Cherokee nation, we would respectfully request you to detail a representative of the Indian Office to assist in making an agreement satisfactory to each of these nations and the Government of the United States.

We have the honor to remain, with respect, your obed't serv't,

LEWIS DOWNING, *P. Chief,*
H. D. REESE,
Chmn. of Delegation,
W. P. ADAIR,
Delegates Cherokee Nation.

432 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May* 21, 1869.

SIR: For your information I herewith transmit copy of a letter addressed by the department to W. A. Phillips, Esqr., attorney for the Cherokees, dated the 12th inst., relative to the transfer of certain stocks belonging to the Delaware tribe of Indians under an agreement made between said Indians, dated April 8th, 1867, and to which my attention was called in report from your office of the 7th ult.

I also enclose copies of a letter to W. S. Huntington, cashier of the First national bank in this city, inquiring the purchasing rates of United States bonds issued in aid of the Union Pacific R. W., E. D., his reply thereto, and my order of the 13th inst. directing the transfer upon the trust-fund books of the department at the rate offered, viz, $106\frac{3}{8}$.

As a precautionary measure I would suggest that you cause these papers to be copied upon the permanent records of your office.

In making the changes of stock upon the books of the Indian Office, you will observe particularly the provisions of the 23d art. of the treaty of July 19th, 1866, with the Cherokees, under which 50

per cent. of all moneys derived from the sale of lands are invested and credited to the "national," 35 per cent. to the "school," and 15 per cent. to the "orphan" funds.

I am, sir, very respectfully, your ob't serv't,

J. D. COX, *Secretary.*

Hon. E. S. Parker, Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May 12th*, 1869.

SIR: In reply to your communication of the 6th inst., you are informed that I have carefully considered the questions therein presented, and will order the transfer of stocks and payment for the land settled upon by the Delaware Indians under certain articles of agreement entered into between the Cherokee nation and the Delaware tribe of Indians on the 8th day of April, 1867, on the following terms, viz:

1st. As, by calculation, it is found that 985 Delaware Indians will require, at 160 acres each, 157,600 acres, amounting, at $1.00 per acre, to $157,600, I will credit the Cherokee national school and orphan trust funds with their proper proportion of Union Pacific R. W., E. D., U. S. issue 6 per cent. bonds, with acrued interest thereon, to such an amount as may be realized at the current market rates on the day of transfer as shall equal the price of the land. In this transfer no allowance will be made for interest claimed by you to be due upon the payment for said land.

2nd. The proportion of the number of Delawares to that of the Cherokees is as 1 to $13\frac{78}{100}$, and the whole amount of stocks which should be transferred to the Cherokee national fund from those belonging to the Delawares is $121,824.28, viz:

Nonpaying stocks	$31,862.98
Paying stocks	89,961.30
	121,824.28

433 Of the description of stock the following have been selected, as it is understood, with your assent:

Nonpaying stocks:		
Florida 7's	$6,000.00	
Louisiana 6's	4,000.00	
North Carolina 6's	21,000.00	
South Carolina 6's	1,000.00	
		$32,000.00
Paying stocks:		
Missouri 6's	2,000.00	
Union Pacific R. W. Co., E. D., U. S. issue 6's	87,824.28	
		89,824.28
		121,824.28

The nonpaying stocks and those of Missouri will be rated at their face or par value, while those of the United States issue will be turned over upon a basis furnished by the current market rates at the date of transfer.

I am, sir, very respectfully, your ob't servant,

J. D. COX, *Secretary.*

W. A. Phillips, Esq., attorney for the Cherokees, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May 13th*, 1869.

SIR: I will thank you to inform me of the current rates of to-day for purchasing United States registered bonds issued to aid in the construction of the Union Pacific railway, eastern division.

You will oblige me by replying by letter.

I am, sir, very respectfully, your ob't servant,

GEO. T. METCALF,
Chief Clerk.

W. S. Huntington, Esq., cash'r 1st nat. bank, Washington city.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May 13th*, 1869.

In accordance with the decision of the 12th inst., the trust-fund clerk of the department is hereby directed to make the transfer from the trust funds of the Delaware Indians to those of the Cherokee nation upon the records of the Interior Department of United States registered bonds issued to aid in the construction of the Union Pacific railway, E. D., at the rate named within, viz, $106\frac{3}{8}$.

J. D. COX,
Secretary and Trustee.

FIRST NATIONAL BANK OF WASHINGTON,
WASHINGTON, D. C., *May 13th*, 1869.

Geo. T. Metcalf, Esq., chief clerk Dept. Int.

DEAR SIR: In response to your favor of even date I would say that we will pay this morning $106\frac{3}{8}$ for U. S. bonds issued to Union Pacific R. R., E. D.

Truly, yours, W. S. HUNTINGTON.

434 WASHINGTON CITY, D. C., *January 30th*, 1868.

Hon. N. G. Taylor, Com'r Ind. Affairs.

SIR: On the 28th inst. we had the honor of laying before you our credentials as delegates representing the Cherokee nation; and the 29th we filed an application requesting the annuity funds due the Cherokee nation be turned over to the principal chief and delegation; and through Honl. Chas. E. Mix, chief cl'k of the Indian

Bureau, presented a copy of the Cherokee constitution, and the recommendation of the principal chief, upon which recommendation the undersigned delegates were confirmed by the Cherokee senate. Should any further evidence be deemed necessary as to the authority of the undersigned principal chief and delegates to order or draw from the Government, in behalf of the Cherokee nation, any and all annuities due the nation, we respectfully submit the accompanying act of the Cherokee national council and ask under its provisions that the Cherokee annuity funds be turned over to the principal chief.

We have the honor to be,
Very respectfully, your ob't serv'ts,

LEWIS DOWNING,
Principal Chief Cherokee Nation.
H. D. REESE,
ARCH. SCRAPER,
E. C. BOUDINOT,
W. P. ADAIR,
SAM'L SMITH,
J. P. DAVIS,
JAMES McDANIEL,
Cherokee Delegates.

An act authorizing the principal chief to have the Cherokee annuities paid to the nation semiannually, according to treaty stipulations.

Whereas by the 23 article of the treaty of July 19, 1866, it is provided that "all funds now due the nation, or that may hereafter accrue from the sale of their lands by the United States, as hereinbefore provided for, shall be invested in United States registered stocks at their current value, and the interest on all said funds shall be paid semiannually on the order of the Cherokee nation:" Therefore,

Be it enacted by the national council, That the principal chief be, and he is hereby, authorized to adopt such measures as may be deemed necessary, before the proper departments of the United States Government, to have the Cherokee funds turned over to the Cherokees promptly semiannually, according to the said twenty-third article of the treaty of July 19, 1866.

Tahlequah, C. N., December 12th, 1867.

JAS. McDANIEL,
President of Senate.
STEPHEN FOREMAN,
Clerk of Senate.

Concurred in.

ARCH. SCRAPER,
Speaker of Council pro Tem.
T. B. WOLFE,
Clerk of Council.

435 On reconsidering the above act the senate added the following clause, viz:

Be it further enacted, That the principal chief be, and he is hereby, required and authorized to issue or draw out the order of the Cherokee nation on the United States Government for all annuities or monies due the Cherokee nation, as provided for in the 23 article of the treaty of 1866, which order shall be deemed the order of the Cherokee nation.

Tahlequah, C. N., December 13, 1867.

CHARLES THOMPSON,
President of Senate pro Tem.
STEPHEN FOREMAN,
Clerk of the Senate.

Concurred in the amendment.

ARCH. SCRAPER,
Speaker of Council pro Tem.
T. B. WOLFE,
Clerk of Council.

Approved.

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

OFFICE OF EXECUTIVE DEPARTMENT
OF THE CHEROKEE NATION, *Dec'r* 20, '67.

This is to certify that the foregoing is a true copy of the original as on file and of record in this office.

By authority.

W. L. G. MILLER,
Executive Secretary.

WASHINGTON, D. C., *Jan.* 28, 1868.

Hon. N. G. Taylor, Commissioner Ind. Affairs.

SIR: I have the honor to transmit herewith a communication from delegates of the Cherokee nation directed to you through me, together with a transcript of the act of the Cherokee council creating said delegates and defining their powers, &c. I have to ask that the national fund due said nation, amounting to the sum of $24,719.86, be turned over by the department, if not in conflict with law and treaty stipulations, to the principal chief of the nation, Col. Lewis Downing, to enable said delegates to meet all expenses consequent upon their present mission in Washington. They have already hypothecated warrants upon their national treasury to enable them to reach the city.

Very respectfully, your ob't serv't,

JAMES WORTHAM,
Supt. Ind. Affairs.

436 An act appointing a delegation.

1. *Be it enacted by the national council*, That a delegation of seven persons be appointed to proceed to Washington city to represent the Cherokee nation and bring to a satisfactory settlement all business of the Cherokee nation with the Government of the United States, and to secure the fulfillment of all business falling under the provisions of the treaty of July 19, 1866.

2. *Be it further enacted*, That it shall be the duty of said delegation to secure back annuities due to the Cherokee nation, and payable to them by treaty and withheld during the war.

3. *Be it further enacted*, That said delegation are hereby empowered to prosecute and secure all claims for horses, provisions, and other military supplies and stores furnished the armies of the United States and remaining unpaid.

4. *Be it further enacted*, That said delegation shall have power to prosecute and secure all claims for horses, cattle, or other property taken from the citizens of the Cherokee nation, and to proceed in the Court of Claims or before any proper authority of the United States and prosecute such claims, and secure indemnification therefor.

5. *Be it further enacted*, That said delegation are empowered to make necessary arrangements with the Government of the United States, or with any tribe of Indians desiring to settle in the Cherokee country, for the settlement of the same, to consult with them or make needful arrangements, subject to the approval of the United States and the Cherokee council. Said delegation shall also have power to prosecute all claims for losses of the Cherokee people caused by the United States, or resulting from the abandonment of the Indian Territory by the United States troops, or from the want of (the) proper protection guaranteed to the Cherokees by its treaties with the United States, and to secure indemnification to its people for such losses, and to prosecute such other business as may be delegated to them by the national council.

6. *Be it further enacted*, That said delegation shall be authorized to employ an attorney, or attorneys, to aid them in the prosecution of such business as herein or (is) hereinafter delegated to them.

7. *Be it further enacted*, That said delegation shall have power to make all necessary negotiations in reference to the sale or disposal of the lands belonging to the Cherokee nation lying west of 96° west, including what is known as the Cherokee Outlet.

8. *Be it further enacted*, That said delegation be, and they are hereby allowed as compensation the sum of three dollars per day, while in actual service, exclusive of all necessary expenses while absent on their mission; and the said delegation are required to make a full report of such necessary expenses to the next annual session of the national council.

9. *Be it further enacted*, That in the event of any vacancy occurring in said delegation the principal chief is hereby authorized to fill said vacancy.

Be it further enacted, That the principal chief be authorized to accompany the delegation.

10. *Be it further enacted*, That the delegation is hereby authorized to enter into a new treaty with the Government of the United
437 States, if advisable, or (to) make any alteration in the treaty of July 19, 1866, whichever may be (the) more satisfactory.

11. *Be it further enacted*, That the principal chief is authorized to draw warrants in favor of the delegation for their services and expenses whenever it is required.

Tahlequah, Cherokee nation, December 11, 1867.

JAMES McDANIEL,
President of the Senate.
STEPHEN FOREMAN,
Clerk of Senate.

Concurred in.

ARCH. SCRAPER,
Speaker of Council pro Tem.
T. B. WOLFE,
Clerk Council.

Approved.

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

OFFICE OF THE EXECUTIVE DEPARTMENT
OF THE CHEROKEE NATION,
December 20, 1867.

This is to certify that the foregoing is a true copy of the original as on file and of record in this office.

By authority.

W. L. G. MILLER, M. D.,
Executive Secretary.

WASHINGTON CITY, *January 29th*, 1868.

Honl. N. G. Taylor, Commissioner Indian Affairs.

SIR: Herewith we have the honor of transmitting to you a copy of our instructions, entitled: "An act appointing a delegation," and which is an enactment of the Cherokee national council during its late session. You will perceive that by sections 8 and 11 of these instructions that the undersigned delegates, including the principal chief, are entitled to their *per diem* allowance and also to all necessary expenses while engaged on their mission; and are also required to make a full report of the same at the next regular session of the national council, to be convened in November next. Not being able at present to make a correct estimate as to the amount of funds required to meet the necessary wants of the delegation, because we can not know how long we may have to remain here in order to estimate our *per diem* allowance; nor do we know what other neces-

sary expense will attach to our delegation. We would therefore respectfully request that you turn over to the undersigned, principal chief and delegates of the Cherokee nation, such annuities as may be due the Cherokees since the last payment. The undersigned would further represent that it will be seen from the enclosed
438 instructions that they represent the Cherokee nation, and, as such representatives, they will endorse any proper vouchers that may be necessary for the funds called for.

Very res'fully, y'r ob't ser'ts,

LEWIS DOWNING,
Principal Chief Cherokee Nation.
H. D. REESE,
W. P. ADAIR,
SAM'L SMITH,
J. PORUM DAVIS,
JAMES McDANIEL,
E. C. BOUDINOTT,
ARCHIBALD SCRAPER,
Cherokee Delegates.

EXECUTIVE DEPARTMENT OF THE CHEROKEE NATION,
TAHLEQUAH, C. N., 16 *Dec'r*, 1867.

To the hon. the senate of the Cherokee nation.

GENTLEMEN: Pursuant to the requirements of the constitution, I have the honor to present for your confirmation the names of the following gentlemen, as a delegation to visit Washington city for the purposes named in the act passed at this session "appointing a delegation," dated Dec'r 11th, 1867. These gentlemen I recommend to your attention:

Samuel Smith, James McDaniel, Arch. Scraper, H. D. Reese, J. P. Davis (Porum), W. P. Adair, and John Brewer.

I am, gentlemen, respectfully, your most obed't se'v't,

LEWIS DOWNING,
Principal Chief of the Cherokee Nation.

The above names confirmed as delegates to visit Washington city.

JAMES McDANIEL,
President of the Senate.
STEPHEN FOREMAN,
Clerk of the Senate.

OFFICE OF THE EXECUTIVE DEPARTMENT
OF THE CHEROKEE NATION,
December 20, 1867.

This is to certify that the foregoing is a true copy of the original as on file and of record in this office.

By authority.

W. L. G. MILLER, M. D.,
Executive Secretary.

DEPT. OF THE INTERIOR,
OFFICE IND. AFFAIRS, *Aug.* 7, 1868.

H. D. Reese, chairman Cherokee delegation, present.

SIR: I am in receipt of your letter of the 30th ult., stating that an arrangement was made last year between the Cherokees and Delawares by which the latter were received into the Cherokee
439 nation, and were to pay a certain sum of money therefor to the Cherokees, to be placed in charge of the U. S. Government as other Cherokee funds, and requesting to be advised whether any funds have been so placed to the credit of the Cherokees, and if so, how much.

In reply I have to say that no portion of the funds referred to by you has been placed to the credit of the Cherokee nation. There are several things that will have to be attended to before such credit can be given. The office has not yet been officially notified of the number of Delawares who have removed to the Cherokee country, and consequently the amount of tribal funds to which those members of the Delaware nation that have removed are entitled to receive or have placed to the credit can not be determined. It is thought that legislative action will have to be had by Congress respecting the disposition of bonds held in trust for the Delawares before the arrangement in question can be completed.

When the necessary information has been received to enable the dept. to act understandingly in the premises, there will be no delay in taking proper steps to have the matter definitely settled.

Very resp'y, your ob't serv't.

N. G. TAYLOR, *Com'r.*

DEPARTMENT OF THE INTERIOR, WASHINGTON,
FORT GIBSON, INDIAN TERRITORY, *July 2nd*, 1897.

The honorable the Secretary of the Interior, Washington, D. C.

SIR: I have the honor to submit the following report upon my supervision of the Cherokee freedmen payment, made at Ft. Gibson, Indian Territory, by Special Agent James G. Dickson, and Indian Agent D. M. Wisdom, respectively.

Under telegraphic instructions of April 1st, 1897, received by me at Valentine, Nebraska, I proceeded to Ft. Gibson, where I arrived on Wednesday morning, April 7th, and found Agent Dickson and his clerical force occupying quarters in the old military post at Ft. Gibson, about one mile north of the business portion of the town. Agent Dickson had arrived on Sunday, April 4th, but had not, up to the time of my arrival, determined upon a place to make the payment, and was absent when I arrived looking over the country at a point about four miles east of Ft. Gibson, known as "Four Mile Branch."

It was common rumor and generally believed that Agent Dickson had made this move to give the impression that he was going outside of the town to make the payment, where the crowd of freedmen

and others would follow him and go into camp, and thus seriously affect the business interests of Ft. Gibson merchants and others who had made calculations upon a large trade during the payment. This in order to have the residents of Ft. Gibson to raise a fund to have the payment made close to their business interests. In this connection see affidavit of W. P. Ross, herewith enclosed, and marked "Exhibit No. 1."

Upon Agent Dickson returning from Four Mile Branch, and finding that an inspector had arrived to supervise the disbursement, he concluded to make the payment in one of the old buildings of the military post, where he had taken up quarters for himself
440 and clerks, adjacent to which the troop of cavalry (guard for paymaster) had gone into camp.

As it appeared to me, after having been a few days on the ground, Agent Dickson was unnecessarily delaying opening of payment. He arrived on April 4th and did not commence paying until April 13th, and then only paid a few persons each day, giving one reason or another as causes for delay; and he did not make any payment for several days at a time.

It is true that the rolls were poorly prepared, in consequence of which considerable difficulty was experienced, in the proper identification of beneficiaries, but he made this appear greater than it really was, thus delaying payment and unreasonably prolonging the work, and which could be reasoned out only on the theory that he had some ulterior motive for protracting the payment—one of which impressed me was a desire to continue his son in service as long as possible, he being employed as one of the clerks at $3.00 per day and expenses. He had consumed about nine weeks at Hayden, making first half of this payment, and was four weeks at Fort Gibson disbursing about $122,000.

Reports and common rumor charged Agent Dickson of forcing collectors (creditors of beneficiaries) to each pay one dollar per day for daily lists of the freedmen paid; and that the money thus taxed collectors, and paid in by them, was for Dickson. Be this as it may, daily lists were furnished, as above stated, to collectors by Dickson's clerks, and money paid them for same, but it is impossible to prove that Dickson received any of the money himself.

There were numerous other rumors regarding Dickson favoring certain creditors and persons who were trying to negotiate certain concessions for a consideration—one of which concessions was a privilege that would be given collectors (who were held outside of line, out of sight of the pay house) to occupy a building directly opposite the pay house and only about 50 yards distant, where they could see all persons as they left the pay house, provided they paid two per cent. of their collections, or a lump sum of $1,800.

A number of the collectors were in favor of making up the required sum for the desired privileges; but others objected, saying that if they had a right to move up to said building by paying for it they had a right to do so without, and while the proposition was under consideration by the collectors F. M. Crowell, of Afton, Indian

Territory, a warm personal friend of Agent Dickson, with whom negotiations were being conducted, got drunk and continued on a spree for several days, during which time the collectors become disgusted and a deal was not consummated. In this connection I invite attention to affidavit of W. M. Kimball, herewith inclosed. (Exhibit No. 2.)

After holding the collectors back at the point first established for about three weeks, Dickson gave them permission to move up to the building above referred to. In the meantime he left the work of identification of beneficiaries and payment chiefly to his clerks, he signing the checks in blank, and was seldom in the pay house while payment was being made, and, as explained by himself, was usually to be found down town, or mingling with the crowd running down some scheme he had heard of as about to be sprung upon him or against him, and was frequently to be found in heated argument with collectors or freedmen.

Very few persons could get a civil answer from Agent
441 Dickson, and never any satisfaction, as his course throughout, from the time of my arrival at Ft. Gibson, and coming under my observation, was vacillating and misleading. He frequently misrepresented matters to me, particularly regarding the decision of Judge Springer, of the U. S. district court of the northern district of the Indian Territory, and regarding his arrangement with F. B. Severs, of Muskogee, Indian Territory, to issue two checks in all the mandamus cases, giving F. B. Severs one check for the amount due him from beneficiary, and the other direct to freedmen. Said Severs and his manager being allowed to sit at the pay table, and thus collect their accounts against beneficiaries, thus becoming favored creditors, and making the Government official collector for Severs in each case.

And as soon as I discovered what was about to be attempted I proceeded to Muskogee to consult with U. S. district attorney, as to the legality of writs issued by Judge Springer, at which time I sent my telegram of May the 3rd reporting same.

Since my return to the Indian Territory I have met said F. B. Severs frequently, and, in reply to certain questions regarding Dickson's conduct of the freedmen payment, he told me in presence of U. S. District Attorney Soaper that he had agreed with Dickson to pay him $3,000 after the freedmen payment was completed, provided he (Dickson) would make two checks for the beneficiaries indebted to Severs, one covering their indebtedness to Severs and the other for the remainder of their respective shares or family claims; and that it was upon this understanding that Dickson commenced payment by issuing two checks during my absence in Muskogee on May the 3rd, 1897.

Capt. Severs said that he had not paid Dickson any money, and would not pay him anything in advance, but agreed to give $3,000 after payment was closed. He further stated that Dickson asked him how much he (Severs) would give him (Dickson) if he arranged to thus secure Severs in his outstanding accounts against the freed-

men, and that he (Severs) offered Dickson $2,500, but that Dickson demanded $3,000, which he (Severs) finally consented to, but as the payment was suspended after only six of his debtors had been thus paid he (Severs) regarded the deal off, and did not pay Dickson anything.

It would be difficult, and could hardly be expected, to get Capt. Severs to make affidavit to the foregoing statement made by him regarding Dickson, but I believe it to be true, as also does the U. S. district attorney, Soper, and I submit it to show the manner in which Agent Dickson conducted the payment; also showing that my suspicions were well founded and recommendation of suspension of payment by him as fully justified.

Agent Wisdom commenced payment of the remaining portion of Cherokee freedmen fund on Thursday, June 10, and closed the rolls yesterday, July 1st, after all persons had been paid, who appeared for payment, except a few whose status or enrollment were such as to make it unsafe for him to pay them from the liability of the items being suspended in the settlement of his accounts.

There was $262,359.87 of the Cherokee freedmen fund unexpended when payment was suspended by Agent Dickson, and this sum was placed to Agent Wisdom's official credit in five installments. There were 1,390 unpaid shares shown on the abstract roll furnished Agent Wisdom for payment, of which he paid 1,222 shares, aggre-
442 gating $228,763.17 disbursed by him, thus leaving an unexpended balance of $33,596.70 to be returned to the U. S. Treasury, less the expense incurred by Agent Wisdom in payment of clerks, rent of room, etc., in making the payment, which expense he has been authorized to pay out of said fund.

Agent Wisdom conducted the payment in a straightforward, businesslike manner, and to the entire satisfaction of all persons concerned. The payment consumed only 14 days actually engaged in the work, five days being lost waiting for receipt of funds, which with three Sundays made eight days that no payments could be made.

He had an efficient corps of clerks, and the disbursements were made as expeditiously as prudence and care in identification of claimants justified.

It will thus be seen that the entire payment of Cherokee freedmen might have been made in forty days had Agent Dickson conducted it properly, instead of having it dragging along for nearly five months.

It has resulted in being detrimental to the freedmen rather than a benefit, many of them having followed the payment, carousing and dissipating since its commencement, thus neglecting their fields and abandoning their homes during the period of the entire five months last past.

There are about twenty of the beneficiaries in penitentiaries outside of the Indian Territory who, not being able to appear in person, could not be paid by Agent Wisdom. Also about twenty others, whose enrollment and status, as hereinbefore stated, was such as to

make it unsafe for Agent Wisdom to pay, but they can be paid direct from Washington upon their respective applications by sending their checks to the agent of Union agency, Indian Territory, or to the postmaster of their respective districts.

A few claimants refrained from drawing their shares, from the fact that they owed more than their shares amounted to, and there were several U. S. deputy marshals in the immediate vicinity outside the pay-ground limits who were provided with writs of replevin issued by U. S. district court, requiring them to turn their respective checks over to the marshals as soon as they passed outside the pay-ground limits. Such claimants can also be paid from Washington.

There are 168 shares shown on the rolls as remaining unpaid, ninety-six of which are duplications, which aggregate $18,120.00, and which amount, if it can legally be done, might be divided *pro rata* among those who were omitted from the Cliffton roll who were rightfully entitled to enrollment, and whose application for enrollment have recently been forwarded by certain attorneys and are now on file in the Indian Office.

It is doubtless a fact that the so-called Cliffton roll is very imperfect. It was prepared by William Cliffton, of Georgia; Robert H. Kern, of St. Louis, Missouri, and William B. Thompson, of Indian Territory, the latter being a member of Cherokee nation, and represented their interest. It is also doubtless a fact that a number of persons having no legal right to enrollment were placed upon said Cliffton roll, and a number who were legally entitled to enrollment were left off. In this connection see affidavit of Daniel Vann, herewith inclosed. (Exhibit No. 3.)

Agent Wisdom and clerks left for Muscogee, his home, last evening after closing the rolls. I leave to-night for Pine Ridge
443 agency, South Dakota, as directed by department letter of 25th ultimo, and expect to reach there Monday or Tuesday next.

I am, sir, very respectfully, your obedient servant,

JAMES McLAUGHLIN,
U. S. Indian Inspector.

EXHIBIT No. 1.

[Post Publishing Company, W. P. Ross, editor.]

FORT GIBSON, I. T., *May* 6, 1897.

This is to certify that on or about the 7th day of April Special Agent Dickson called at my office and said he was thinking strongly of moving the payment from the town of Ft. Gibson to my premises, which is about 1½ miles east of the town. Dickson asked me if I had figured on what the payment would be worth to me if located on my land. I told him several hundred dollars, I suppose. Dickson then said if he moved the people would follow him, and it

would make me a good deal of money, and that he might move out on my place. I offered him my house and premises free of charge if I would be allowed to collect rent from the public wishing to do business on my land.

Agent Dickson stated he wished this conversation to be private or confidential, as we were alone in my office.

Had I known Dickson as well as I do now, I have no doubt but what I could have induced him to make payment on my premises.

WM. P. ROSS,
Editor Post.

Subscribed and sworn to before me at Fort Gibson, Ind. Ter., this 6th day of May, 1897.

JAMES McLAUGHLIN,
U. S. Indian Inspector.

EXHIBIT No. 2.

UNITED STATES OF AMERICA, }
Indian Territory, Northern District. }

Personally appeared before me, M. O. Ghormley, a notary public for the State and district afore named, W. M. Kimbal, who, after being duly sworn, deposeth and saith that while J. G. Dickson, special disbursing agent of the Cherokee freedmen, was paying the money out at Ft. Gibson, C. N., and during the month of April, 1897, we, the creditor, were notified that there was a line, which was called the "dead line," which we *was* not allowed to cross while the payment was in progress, and which line was about three hundred yards from the pay house and out of sight. One man by the name of F. M. Crowell said to me that it was arranged that if we would give two per cent. of the amount of the freedmen's indebtedness that we could have the privilege of coming to a building which was about fifty yards from the pay house. I talked with several about it, and they thought that it was too much, and finally he (Mr. F. M. Crowell) said we could have it for eighteen hundred dollars. 444 We could not raise the money, therefore the trade was not consummated. My age is 73 years and post address is Howard, Kansas.

W. M. KIMBALL.

Subscribed to and sworn before me this the 8th day of May, 1897.
[SEAL.] M. O. GHORMLEY,
Notary Public, Northern Dist., I. T.

EXHIBIT No. 3.

Daniel Vann, being first duly sworn, deposes and says that he is 72 years of age, a Cherokee freedman, and resides at Fort Gibson, Indian Territory; that during the summer of 1896, when the Chero-

kee freedmen roll was being prepared by Messrs. Clifton, Kern, and Thompson, deponent was approached by J. Milton Turner, a colored attorney of St. Louis, who accompanied said commission, who demanded from deponent ten (10) dollars for himself and each member of his family to have them enrolled; that deponent refused to do so from the fact that he was on the authenticated Cherokee freedmen roll of 1880, being No. 485 thereon, and his wife, four children, and wife's mother follow in consecutive order, all of whom, a total of seven (7) person were omitted from said Clifton, Kern, and Thompson roll. Deponent further swears that said J. Milton Turner, failing to get his consent to pay ten dollars each to have himself and family enrolled, sent several persons to deponent advising him to consent to such payment, and that said J. Milton Turner sent some other parties to deponent to appear as a witness and give testimony under oath that certain parties, one George Vann, was deponent's brother and entitled to enrollment; that deponent would not give such testimony and refused to do so, knowing that said George Vann was not a Cherokee freedman; that notwithstanding this fact said George Vann was enrolled on said Clifton, Kern, and Thompson roll, and has drawn money on said roll as a Cherokee freedman beneficiary. Deponent further swears that he knows of no other reason why he and his family should have been omitted from said roll, except that he refused to pay, or agree to pay, said J. Milton Turner ten (10) dollars each for having deponent and family enrolled and refusing to make false statements which would have enabled said J. Milton Turner to have other colored persons enrolled; and further deponent saith not.

DANIEL (his x mark) VANN.

Witness to signature:
J. G. GALBRAITH, U. S. A.

Subscribed and sworn to before me at Fort Gibson, Ind. Ter., this 1st day of July, 1897.

JAMES McLAUGHLIN,
U. S. Ind. Inspector.

DELAWARE AGENCY, KANSAS, *Sept'r 13th*, 1863.

SIR: The Delaware chiefs are anxious to know at what time John Ross, chief of the Cherokees, will return home. In the event
445 of his not returning they wish (if it can be done) him to delegate some person to cede a part of their country. The Delawares wish that portion of the Cherokee country adjoining the State of Kansas, twelve miles wide by fifteen long, lying on the Verdigris. They ask that you use your influence with the Cherokees to secure that portion of the Cherokee country for them.

Please write immediately at what time Mr. Ross will return, as the Delawares are anxious to visit the Cherokees.

Very respectfully, your ob't serv't,

F. JOHNSON, *Ind. Agent.*

Hon. Wm. P. Dole, Com'r of Ind. Aff'rs.

DELAWARE AGENCY, KANSAS, *November 30th*, 1863.

SIR: I am instructed by the Delaware chiefs to inform you that they have visited the Cherokee country with a view of looking out a new home. They request me to say to you that they are well pleased with that part of the country which they visited and are willing to accept it as their future home. They desire that the Government purchase for them of the Cherokees a tract of country on Cary creek, commencing at a point on the line dividing the State of Kansas from the Cherokee country, five miles east of said creek, running west with said line fifteen miles, thence south thirty miles, thence east fifteen miles, thence north thirty miles, to the place of beginning.

At the time of their visit they could not purchase land as there was no authorized power in the Cherokee country to make treaties or to dispose of any part of their lands. Having full faith and confidence in the ability and justice of the Government of the United States, they desire that the Government purchase for them the tract of country designated, and will be satisfied with the purchase made in their behalf. Should the Government succeed in making the purchase for them they are willing to make a treaty and sell their lands in Kansas and remove. In doing so they hope to acquire a permanent home. The Delawares are solicitous that the purchase be made as soon as practicable.

Very respectfully, your ob't serv't,

F. JOHNSON, *Ind. Agent.*

Hon. Wm. P. Dole, Com's'r of Ind. Aff'rs, Washington city, D. C.

DELAWARE AGENCY, KANSAS, *November 30th*, 1863.

SIR: I have the honor of forwarding a letter written at the request of the chiefs and councilors of the Delaware tribe of Indians. The country selected is about twenty miles west of the Verdigris and is very desirable. It is equal if not better than their present location in Kansas. You will see that they are avaricious and ask you to purchase, by the boundaries set forth, about 296,000 acres, which would be over two hundred acres *pr. capita*, including near two hundred Delawares who reside in the south, but who will again join the tribe provided the Delawares remove to the Cherokee country. Should the department consider the am't of land too large I think the Delawares would be satisfied with the am't of land that you may designate, and I think will be satisfied with a reservation ten by twenty miles in size.

446

The Delawares expect to be invited to Washington for the purpose of making a treaty. If it is the wish of the department to make it in Washington, or if the department think it preferable, I think I would have no difficulty in making a treaty that would meet the approval of the Government, and the Indians could then visit Washington to urge the ratification.

Your ob't serv't,

F. JOHNSON, *Ind. Agent.*

Hon. Wm. P. Dole, Com's'r of Ind. Affairs.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, the Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A letter marked "Delaware C 685," written by Captain John Connor and others to Hon. William P. Dole, from Leavenworth, Kans., February 9, 1864.

A letter marked "Delaware I 471," written by F. Johnson, Indian agent, at Delaware agency, Kans., March 10, 1864, to Hon. William P. Dole.

A letter marked "Delaware G 485," written by F. Johnson, Indian agent, at Delaware agency, Kans., March 21, 1864, to Hon. William P. Dole.

The order of the President on the subject of the lands of the Cherokee Indians in the Indian Territory west of the ninety-sixth degree west longitude, dated June 23, 1879, which order approved the action of the Secretary of the Interior conveyed to the President by letter dated June 19, 1879, in appraising and fixing the value of certain lands ceded by the Cherokee Indians to the United States to be used in the settlement of friendly Indians, as follows:

Lands lying west of ninety-sixth degree west longitude in Indian Territory, embracing an area of 230,014.04 acres, at 70 cents per acre.

All other lands ceded by the Cherokees in the treaty of 1866, article 16, embracing an area of 6,344,562.01 acres, at 47.49 cents per acre.

Feb. 23, 1899.

WALTER S. LOGAN,
Attorney for Plaintiffs.

Motion for Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the In-
447 terior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A letter marked "Delaware A 778," written at the office of the superintendent of Indian affairs, St. Joseph, September 2, 1864, by W. M. Albin to Hon. William P. Dole.

A letter marked "Delaware A 778," written at the Delaware reserve, Kansas, August 29, 1864, by John G. Pratt to Hon. William P. Dole.

A letter marked "Delaware M 589," written at the office of the superintendent of Indian affairs at Atchison, August 25, 1886 [1866], by Thomas Murphy to Hon. D. N. Cooley.

A letter marked "Delaware M 689," written at the office of the United States agency for the Delaware Indians, Delaware reserve, Kansas, August 21, 1866, by John G. Pratt to Thomas Murphy, Esq.

A letter marked "Delaware M 689," written at the office of the United States agency for the Delaware Indians, Delaware reserve, Kansas, May 5, 1866, by Captain John Connor and others to Thomas Murphy, Esq.

A letter marked "Delaware M 229, 689," written at the Delaware council house, August 17, 1866, by John Connor and another to John G. Pratt.

A letter marked "Delaware M 646," [746], written at the office of the superintendent of Indian affairs at Atchison, September 24, 1866, by Thomas Murphy to Hon. D. N. Cooley.

A letter marked "Delaware M 746," written at the Delaware council house, Kansas, September 16, 1866, by R. J. E. Journeycake to J. G. Pratt.

A letter marked "Delaware M 646" [746], written at the Delaware agency, Kans., September 17, 1866, by John G. Pratt to Thomas Murphy, Esq.

A letter written at Washington, D. C., March 14, 1874, by D. W. Bushyhead to Hon. E. P. Smith, Commissioner of Indian Affairs.

A letter written at the Department of the Interior, Office of Indian Affairs, Washington, D. C., May 15, 1874, by Hon. Edward P. Smith, Commissioner, to D. W. Bushyhead, said letter being in answer to the letter written to Hon. E. P. Smith by D. W. Bushyhead, March 14, 1874.

Your petitioners desire that with the said letter from Hon. Edward P. Smith to D. W. Bushyhead there shall be furnished the following statements referred to in said letter:

A. "No. 3. Statement of funds derived from the sale of lands in the Cherokee country to the Osages, under the sixteenth article of the treaty of July 19, 1866, and the disposition thereof."

B. "No. 5. Statement of the amount paid by the Delawares to the Cherokees for lands and an interest in funds per agreement between said Indians dated April 8, 1867."

Dated New York, March 7, 1899.

WALTER S. LOGAN,
Attorney for Plaintiffs.

448 *Reply of Interior Department.*

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *April* 10, 1899.

The honorable Chief Justice of the Court of Claims.

SIR: Pursuant to the order of the Court of Claims, dated March 21, 1899, requesting this department to furnish said court, to be used

in the case of Delaware Indians, *et al.*, *v.* The Cherokee Nation (No. 21139), now pending in said court, "any information or papers (or duly authenticated copies of the same, if preferred), supposed to be on file in your (this) department, set forth in the accompanying rule allowed by the court," I have the honor to transmit herewith duly certified copies of the papers on file in the office of the acting Commissioner of Indian Affairs, as stated by the report of said acting Commissioner. Attention is called to that portion of the report which shows that (A) No. 3 and (B) No. 5 were taken from a privately printed document in the possession of the Office of Indian Affairs, but in the belief of the acting Commissioner they are true copies of the originals of said statements, which were transmitted by the Indian Office to Mr. Bushyhead without retaining official copies.

A copy of the report of the acting Commissioner of Indian Affairs and said order of the court are herewith returned.

Respectfully, E. A. HITCHCOCK, *Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *April* 7, 1899.

The honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt of your letter dated March 24, 1899, transmitting an order dated the 21st ultimo from the Court of Claims, requesting certain papers (or authenticated copies thereof) to be used as evidence in the case of The Delaware Indians *vs.* The Cherokee Nation (No. 21139).

Agreeably with your direction and in compliance with the request contained in the order of said court, I transmit herewith duly certified copies of the following official papers and documents:

(1.) Letter marked "Delaware C 685," dated February 9, 1864, from Captain John Connor *et al.* to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(2.) Letter marked "Delaware J 471," dated March 10, 1864, from F. Johnson, U. S. Indian agent, Delaware agency, Kansas, to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(3.) Letter marked "Delaware J 485," dated March 21, 1864, from F. Johnson, U. S. Indian agent, Delaware agency, Kansas, to Hon Wm. P. Dole, Com'r of Indian Affairs.

(4.) Executive order dated June 23, 1879, approving the action of the Secretary of the Interior in appraising certain lands west of the 96° west longitude ceded by the Cherokees to the United States to be used in the settlement of friendly Indians.

(5.) Letter marked "Delaware A 778," dated September 2,
449 1864, and one enclosure, from W. M. Albin, sup't Indian affairs, St. Joseph, Mo., to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(6.) Letter marked "Delaware M 689," dated August 25, 1866, and four enclosures, from Thomas Murphy, sup't Indian affairs, Atchison, Kansas, to Hon. D. N. Cooley, Com'r of Indian Affairs.

(7.) Letter marked "Delaware M 746," dated September 24, 1866, and two enclosures, from Thos. Murphy, sup't Indian affairs, Atchison, Kansas, to Hon. D. N. Cooley, Com'r of Indian Affairs.

(8.) Letter marked "Cherokee B 360," dated March 14, 1874, from D. W. Bushyhead to Hon. E. P. Smith, Com'r of Indian Affairs.

(9.) Letter dated May 15, 1874, from Hon. E. P. Smith, Com'r of Indian Affairs, to D. W. Bushyhead, with copies of following statements:

(A.) "No. 3. Statement of funds derived from the sale of lands in the Cherokee country to the Osages, under the sixteenth article of the treaty of July 19, 1866, and the disposition thereof."

(B.) "No. 5. Statement of the amount paid by the Delawares to the Cherokees for lands and an interest in funds, per agreement between said Indians, dated April 8, 1867."

(NOTE.—The copies of statements Nos. 3 and 5 were taken from a privately printed document in the possession of this office. They are believed, however, to be true copies of the originals of said statements which were transmitted to Mr. Bushyhead by this office without retaining official copies.)

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *April* 7, 1899.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true and literal copies of—

(1.) Letter marked "Delaware C 685," dated February 9, 1864, from Captain John Conner *et al.* to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(2.) Letter marked "Delaware J 471," dated March 10, 1864, from F. Johnson, U. S. Indian agent, Delaware agency, Kansas, to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(3.) Letter marked "Delaware J 485," dated March 21, 1864, from F. Johnson, U. S. Indian agent, Delaware agency, Kansas, to Hon. Wm. P. Dole, Com'r of Indian Affairs.

(4.) Executive order dated June 23, 1879, approving the action of the Secretary of the Interior in appraising certain lands west of the 96° west longitude ceded by the Cherokees to the United States to be used in the settlement of friendly Indians.

(5.) Letter marked "Delaware A 778," dated September 2, 1864, and one enclosure, from W. M. Albin, sup't Indian affairs, St. Joseph, Mo., to Hon. Wm. P. Dole, Com'r of Indian Affairs.

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Atchison, Kansas, to Hon. D. N. Cooley, Com'r of Indian Affairs.

450 (7.) Letter marked "Delaware M 746," dated September 24, 1866, and two enclosures, from Thos. Murphy, sup't Indian affairs, Atchison, Kansas, to Hon. D. N. Cooley, Com'r of Indian Affairs.

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(NOTE.—The copies of statements Nos. 3 and 5 were taken from a privately printed document in the possession of this office. They are believed, however, to be true copies of the originals of said statements which were transmitted to Mr. Bushyhead by this office without retaining official copies.)

As the same appear on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

A. C. TONNER,
Acting Commissioner.

LEAVENWORTH, KANSAS, *Feb.* 9, 1864.

Hon. Wm. P. Dole, Comm., &c.

SIR: You will recollect at our interview last Sept. it was an understanding that we should go south and look at a section of country unoccupied and ascertained whether it would be suited for our people. As arranged, we did go and make such examination. The portion of country selected as best suited, we understand, belongs to the Cherokees. John Ross was at the time and is now in Washington and knew of our visit, and you have no doubt had frequent interview with him on this subject, but no official notice has as yet reach us to what you wish or what the Cherokees will do. We have been long waiting for some word from you in regard to this, to us, important business. Will you have the goodness to let us hear soon as convenient what may be expected?

We also notice that a portion of our people are holding frequent councils and are writing to and receiving answers from you, until

we have become at last desirous of learning whether this work is of an action after a while to have hearing in our national business.

CAPT. JOHN CONNOR.
CAPT. SARCOXIE.
CHAS. JOURNEYCAKE.
JAMES CONNOR.
ANDREW MILLER.
JAMES KETCHUM.
BIG RACCOON.
WM. ADAMS, *Clerk*

451 DELAWARE AGENCY, KANSAS, *March 10th*, 1864.

SIR: In the first of November I addressed a letter to you stating that I had visited the Cherokee country with a delegation of Delawares for the purpose of selecting a future home to remove to; that they were well pleased with the country and were willing to remove there, provided they could secure a portion of that country.

On the 30th November I wrote to the department, at the request of the chiefs to the same purport, and desiring you to purchase a portion of that country for them, as the head chief of the Cherokees, Mr. Ross, was in Washington city and no person in the Indian country empowered to make treaties. I have not received an answer to either of my letters. Some two or three weeks since the Indians addressed you a letter on the same subject, a copy of which they have shown me.

The Delawares are willing to make a treaty, provided they have a country secured to remove to. A majority of them prefer going South to the Indian Territory and prefer that portion owned by the Cherokees. A small portion, a minority controlled by Ben Simon, wish to emigrate to Idaho or Washington Territory.

I think a treaty might be made with the Delawares, giving them the privilege of remaining on their present reservation until peace is restored to the country or the Government guaranteeing protection in their new homes. They would be willing to sell their lands at their appraised value, they having an equal voice in appointing or choosing the appraisers, or they would be willing for their lands to be sold to the highest bidder, not recognizing the rights of squatters at the sale.

The Delaware lands are the most desirable of any in Kansas and are daily increasing in value, a fact that the Indians fully understand, and the longer a treaty is deferred the more difficult it will be to consummate it.

That the Delaware reservation is a detriment and an injury to the county will be conceded by all acquainted with the facts. Three-fourths of Wyandotte county is composed of Indian lands not sub-

ject to taxation. The interests of this country demand that the lands should be open for settlement and subject to taxation.

Very respectfully, your ob't serv't,

F. JOHNSON,
Indian Agent.

Hon. Wm. P. Dole, Commissioner of Ind. Aff'rs, Washington city, D. C.

DELAWARE AGENCY, KANSAS, *March 21st*, 1864.

SIR: I am requested by the chiefs of the Delaware tribe of Indians to inform you that they received your letter stating that John Ross, head chief of the Cherokees, will shortly visit the Delawares in Kansas on his way home to the Indian country, and that the Delawares will be enabled to purchase land of the Cherokees.

If Mr. Ross has not the power to consummate a treaty, *and it is necessary for the Delawares to visit the Indian Territory for that purpose*, they wish to know if they can have the privilege of doing so.

Also whether they can have the privilege of making an ap-
452 propriation to pay the expenses of the trip, and also whether you will permit me to go with them.

Very respectfully, your ob't serv't,

F. JOHNSON, *Ind. Agent.*

Hon. Wm. P. Dole, Com'r of Ind. Affairs, Washington city.

The action of the Secretary of the Interior as conveyed to me by letter dated the 19th instant in appraising and fixing the value of certain lands ceded by the Cherokee Indians to the United States to be used in the settlement of friendly Indians as follows:

Lands lying west of 96° west longitude in Indian Territory, set apart under act of April 10, 1876 (19 Stats., 29), as a portion of the reservation for the Pawnee Indians, embracing an area of 230,014.04 acres at 70 cents per acre.

All other lands ceded by the Cherokees in the treaty of 1866, article 16 (14 Stats., 804), embracing an area of 6,344,562.01 acres at 47.49 cents per acre, is hereby approved and ratified as my act. Under the act of May 29, 1872.

R. B. HAYES.

Executive Mansion, June 23rd, 1879.

OFFICE SUPT. IND. AFFAIRS,
ST. JOSEPH, *Sep. 2d*, 1864.

SIR: I have the honor herewith to transmit a letter from Agent Pratt of the 29th ulto., urging a speedy remittance of the Delaware annuity, and also requesting that the amount paid for exploring the Cherokee country last season may be refunded to the Delaware nation.

Very respectfully, your ob't serv't,

W. M. ALBIN,
Supt. Ind. Aff'rs.

Hon. Wm. P. Dole, Commissioner, Washington, D. C.

DELAWARE RESERVE, KAN., *Aug.* 29, 1864.

Hon. Wm. P. Dole, Com'r, &c.

SIR: At a recent session of the Delaware council they instructed me to ask that the annuity to be paid the nation be forwarded at as early a date as possible. The high cost of living and a failure of some part of the crops render it a matter of importance that this aid be at hand seasonably that they may make preparations for the winter.

They ask to have returned to them this autumn the money used by the party which went to explore the Cherokee country last season. The am't they understand to be $786.

They are particular*ly* that the payment be made as large as possible in view of their increased expenses. There seems to be an impression that if the interest due on the sale of their trust lands is included the am't to be received will — greatly increased.

453 It was also asked, would the acc't be taken of stolen stock and are they to examine their new home this autumn?

Very respectfully, y'r ob't s'v't,

JOHN G. PRATT,
U. S. Ind. Ag't.

Hon. Wm. P. Dole, Com'r, etc., Washington, D. C.

OFFICE SUPT. IND. AFF'RS,
ATCHISON, *Aug't 25th*, 1866.

SIR: I have the honor herewith to transmit a letter from Ag't Pratt of the 21st inst., enclosing a letter from the Delaware chiefs, asking when they will be permitted to select a home for the people, and enclosing copy of a letter from the same dated the 5th May on the same subject.

The original of the letter was forwarded by me to the department on the 8th May with recommendation that their request be granted. I beg leave to call your attention to this subject and again recommend that a delegation of the Delawares may be permitted to visit the southern country at an early day to select suitable homes for their people.

Very respectfully, your ob't serv't,

THOS. MURPHY,
Supt. Ind. Aff'rs.

Hon. D. N. Cooley, Commissioner, Washington, D. C.

OFFICE OF THE U. S. AGENCY
FOR THE DELAWARE INDIANS,
DELAWARE RESERVE, KAS., *August* 21, 1866.

SIR: I enclose a communication (copy) signed by the chiefs of the Delaware Indians and forwarded to your office May 5th, 1866, upon the subject of sending a delegation to the southwest for the purpose of selecting a new reserve, etc.

The necessity of such action upon their part at the present time is more apparent and they desire that the request when made be repeated, which I accordingly do, and recommend that permission be granted at an early day. I enclose also a communication from the chiefs under date Aug. 17, 1866, upon which my action has been predicated.

Very respectfully, JOHN G. PRATT,
United States Ind. Agent.

To Thomas Murphy, Esq'r, supt. Ind. aff'rs, Atchison, Kansas.

OFFICE OF THE U. S. AGENCY
FOR THE DELAWARE INDIANS,
DELAWARE RESERVE, KAS., *May 5th*, 1866.

SIR: In view of the ratification of our treaty at no distant day, we would respectfully ask your department for permission to send a delegation to the southwest for the purpose of acquiring a new reservation, and, if in your judgment deemed advisable, make
454 such selection and enter upon the preliminary arrangements (subject to the approbation of your office) as will ultimately secure the object desired. We apprehend in the general exodus of the Indians from this State that good and suitable locations will be difficult to be had, and therefore request that you indicate the region of country that we may be permitted to examine, and that we may be informed at an early day of the wishes of your office in this regard.

Very respectfully,
CAPT. JOHN CONNOR, *Principal Chief.*
" SAR COXIE, *Ass't Chief.*
CHARLES JOURNEYCAKE,
Ass't Chief.

To Thomas Murphy, Esq., supt. Ind. aff'rs, Atchison, Kas.

DELAWARE COUNCIL HOUSE, *Aug. 17th*, 1866.

J. G. Pratt, U. S. Ind. ag't.

SIR: We wish to know, through you, from the superintendent, when we are to seek a new home for our people. It would be better to seek for the country as soon as it gets cooler.

JOHN (his x mark) CONNER,
Head Chief.
CHARLES JOURNEYCAKE,
Ass't Chief.

To John G. Pratt, United States Ind. agent, Delaware reserve, Kansas.

OFFICE SUPT. IND. AFF'RS, ATCHISON, *Sept. 24th*, 1866.

SIR: I have the honor to herewith transmit a letter from Agent Pratt, of the 17th inst., enclosing one from the Delaware council

clerk, R. J. E. Johnnycake, in which it is suggested to use certain funds in his hands to help defray the expenses of the delegation of Delawares who are about to visit the South to select a new home. For this purpose I recommend a remittance of $700 +, and that the agent be authorized to use the $837.70 on hand.

Very respectfully, your ob't serv't,

THOS. MURPHY,
Supt. Ind. Affairs.

Hon. D. W. Cooley, Commissioner, Washington, D. C.

DELAWARE COUNCIL HOUSE,
WYANDOTT CO., KANSAS, *Sept. 16th*, 1866.

Maj. J. G. Pratt, U. S. Ind. ag't.

SIR: On your representation from the department for the Delawares to seek a new home, the council has concluded that the
455 money in your possession resulting from the sale of timber on national lands be used for the above purpose.

You will also recollect that by the order of Commissioner Dole the Delawares explored the southwest in the autumn of 1863; that Commissioner Dole promised to refund the money used on that expedition. It is the desire of the Delawares that the above be refunded; also that the annuity money be sent soon, so that the families of the delegates may use the same during the absence of the expedition.

Yours, &c., R. J. E. JONNEYCAKE.
Council Clerk.

DELAWARE AGENCY, KANSAS, *Sept.* 17, 1866.

SIR: Your letter of Sept. 11th, inclosing one from Commissioner Cooley of Sept. 1st, has been received. To-day I submitted to the Delaware council your instructions in regard to their seeking a new home. Inclosed please find letter from them expressing their pleasure in reference to the matter. I would add that I have on hand and subject to your order the sum of eight hundred thirty-seven dollars and seventy cents ($837.70), resulting from sale of R. R. ties and timber during 1865.

The expense of the party exploring in 1863 was seven hundred dollars ($700.00), and which Commissioner Dole promised them should be refunded on the ratification of their treaty. These two am'ts, equal to one thousand five hundred thirty-seven dollars and seventy cents ($1,537.70), they estimate will be needed for their present visit south, as it may be long protracted from the fact they have to negotiate with the tribe from whom they purchase.

They do not wish to leave home until the autumn payments, and I hope it may be possible to accommodate them.

Very respectfully, y'r o'b't s'v't,

JOHN G. PRATT,
U. S. Ind. Agent.

Thomas Murphy, Esqr., supt. Ind. aff's, Atchison, Kansas.

WASHINGTON CITY, D. C., *March 14th*, 1874.

Hon. E. P. Smith, Commissioner of Indian Affairs.

SIR: In order to get the business of my office in shape and be able to report the exact condition of their funds to the Cherokee national council I would respectfully ask you to furnish me the following information:

1st. The amount of stocks and bonds held by the department for the Cherokee nation on the 4th of July, 1866, including all non-paying stocks and abstracted bonds on which the Government was paying enterest, with character of these bonds.

2nd. The amount of proceeds from the sale of the neutral lands; also the net amount of the same when expenses were deducted and the present value of the bonds purchased therewith which is bearing interest.

456 3rd. The amount paid by the Delawares to the Cherokees for lands and interest on funds and the kind of stock in which it is held.

4th. The amount paid by the Shawnees and how invested, with face value.

5th. The amount of funds to pay the $150,000 of debt and from what sources derived.

6th. The amount transferred on the books of the Treasury and standing to the credit of the Cherokee nation, paid under act of Congress from Osage tribe of Indians for their lands, and whether the five per cent. interest it bears is payable without appropriation under the act; and if not, whether it has been estimated for.

7th. The proceeds from sales of Cherokee strip in Kansas so far and how held and invested, with face value of investments.

The purpose of this communication is to possess in my office an exact condition of our funds, so that estimates can be made thereon, and showing what portions of these funds are held on the books as national, school, and orphan.

I am, with respect, your ob't serv't,

D. W. BUSHYHEAD,
Treasurer C. N.

DEPT. INTERIOR, OFFICE INDIAN AFF'RS, *May 15th*, 1874.

D. W. Bushyhead, Esq., treasurer Cherokee nation, Washington, D. C.

SIR: I have received your letter of the 14th of March last, requesting to be furnished with certain statements, in order that you may be enabled to get the business of your office in shape and to report the exact condition of their funds to the Cherokee national council.

In compliance with your request I have caused to be prepared, in their simplest form, but with great care and much labor, the following statements, which are transmitted herewith, viz:

Statement No. 1, showing the receipts and disbursements on account of sales of the Cherokee neutral lands.

No. 2, receipts and disbursements on account of the sales of the Cherokee strip.

No. 3, showing the amount received from the Osages for lands and the disposition of the same.

No. 4, statement of the Cherokee national warrants paid and the sources from whence the funds used in payment were derived.

No. 5, statement of amount paid by the Delawares for lands, &c., per agreement of April 8, 1867, and how invested.

No. 6, statement of amount paid by the Shawnees, per agreement of June 7th, 1869, and how invested.

No. 7, Cherokee stock account, showing the amount and kinds of stock on hand July 19th, 1866; the purchases, sales, and redemption of stock since that date, and the amounts now on hand.

No. 8, showing the aggregate of the principal and the annual interest thereon, belonging to the several Cherokee funds, and the amount of interest payable in coin and in currency.

No. 9, statement showing in detail the amounts of interest and the premium on coin interest collected since July 1st, 1866,
457 giving amounts and kinds of stock and the period for which collected and the disposition of the same.

In reply to your inquiry, whether the interest accruing on the amount transferred from the Osages in payment for lands is payable without an appropriation by Congress, I have to say that, in the opinion of this office, the act of March 3rd, 1873, authorizing the transfer of said funds, confers the necessary authority for the payment of the interest without any special appropriation therefor by Congress.

Very respectfully, your ob't servant,

E. P. SMITH,
Commissioner.

No. 3.—Statement of Funds Derived from the Sale of Lands in the Cherokee Country to the Osages, under the 16th Article of the Treaty of July 19, 1866, and the Disposition Thereof.

1873.		
June 12.	To amount transferred from sales of Osage lands, in payment for 1,566,784 acres of land purchased by the Osages, per act of March 3, 1873	$1,096,748.80
1873.		
June 12.	By amount set apart for the benefit of an orphan institution, per act of February 14, 1873	20,000.00
"	set apart for the establishment of a literary institution, per act of February 14, 1873	75,000.00
"	set apart and invested in United States stocks, for the orphan fund, per act of February 14, 1873	80,000.00
1874.		
May —.	By balance, at interest, 5 per centum per annum	921,748.80
		1,096,748.80

$80,000 of the above funds were invested in United States stocks, the face value of which is $71,505.41, and the same were added to the orphan fund, per act of February 14, 1873. The $95,000 set apart by the act of February 14, 1873, for the benefit of an orphan institution and the establishment of a literary institution, was remitted to John B. Jones, Indian agent, on the 27th of April, 1874.

No. 5.—Statement of the Amount Paid by the Delawares to the Cherokees for Lands and an Interest in Funds per Agreement Between Said Indians, Dated April 8, 1867.

Cherokee funds to which stocks were transferred.	Kind of stocks transferred.	Amount.
National fund.....	Florida 7's.....	$6,000.00
	Louisiana 6's.....	4,000.00
	Missouri 6's.....	2,000.00
	North Carolina 6's.....	21,000.00
	South Carolina 6's.....	1,000.00
	United States issue to Union Pacific R. R. 6's....	156,638.56
School fund.....	" " " 6's....	51,854.28
Orphan fund	" " " 6's....	22,223.26
	Total stocks transferred.....	264,716.10
	The $230,716.10 United States stocks were transferred at a premium of 6⅜ per cent., the market rate at date of transfer-premium.	14,708.18
	Total stocks and premium.....	279,424.28
	Being the amount required to pay for lands and an interest in funds. These stocks are still on hand.	

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney,
458 and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A letter marked Delaware M 1277, being a letter written at Washington, D. C., February 13, 1868, by Thomas Murphy, Esq., superintendent of Indian affairs, to Hon. N. G. Taylor. This letter is on file in the office of the Commissioner of Indian Affairs, and attached to it are certain exhibits, all of which your petitioners pray may be transmitted to said court, together with the letter. The exhibits consist of—

1. Report of John G. Pratt.

2. A letter to the office of Indian affairs, dated Washington, D. C., September 1, 1866, signed D. N. Cooley, marked "Exhibit A," and apparently attached to the said report of John G. Pratt.

3. A letter dated "Delaware reserve, Kansas, October 13, 1866," signed John G. Pratt, addressed to various chiefs and counselors of the Delaware nation, marked "Exhibit B."

4. A certificate signed John G. Pratt, marked "Exhibit C."

5. A letter written by various chiefs of the Delaware nation to William P. Ross, principal chief of the Cherokee nation, dated Camp

on the Canae, Cherokee nation, December 9, 1866, marked "Exhibit D."

6. A certificate to R. E. J. Journeycake, dated "Delaware Diminish reserve, Kans., February 25, 1867," marked "Exhibit E."

7. A list of names of Delaware Indians, marked "Exhibit F."

A letter marked "Delaware M 1608," written at the office of superintendent of Indian affairs, at Atchison, Kans., on June 6, 1868, by Thomas Murphy.

Letter marked "Delaware M 82," written at Washington, D. C., February 1, 1869, by Thomas Murphy to Hon. N. G. Taylor, in which is included copy of a letter from John G. Pratt, written at the office of the Delaware agency on January 16, 1869.

A letter marked "Delaware C 111," written at the Cherokee nation February 15, 1869, by John Connor, addressed to Hon. N. G. Taylor.

Dated New York, May 8, 1899.

WALTER S. LOGAN,
Attorney for the Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May* 26, 1899.

The honorable the Chief Justice of the Court of Claims.

SIR: In response to the order of the court in the case of The Delaware Indians *v.* The Cherokee Nation, No. 21139, requesting that said court be furnished, for use as evidence on the trial of the above-entitled cause, certain papers (or duly authenticated copies of the same) supposed to be on file in the Interior Department, as set forth in the motion of counsel for the plaintiffs accompanying said rule, you are advised that said order of the court and accompanying rule were referred to the Commissioner of Indian Affairs on the 17th instant for consideration and report.

The department is now in receipt of the report of the acting Commissioner of Indian Affairs, containing the certified copies as
459 requested in said rule, which, together with a copy of the report of the acting Commissioner, and said rule and motion, are inclosed herewith.

Respectfully,

THOS. RYAN,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *May* 23, 1899.

The honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt of your communication, dated May 17, 1899, transmitting a rule, dated the 13th

inst., issued by the Court of Claims in the case (No. 21139) of The Delaware Indians *v.* The Cherokee Nation, requesting that said court be furnished, for use as evidence on the trial of the above-entitled cause, certain papers (or duly authenticated copies of the same) supposed to be on file in the Department of the Interior, as set forth in the motion of counsel for plaintiffs accompanying said rule.

In reply I respectfully transmit herewith duly certified copies of the following described papers, being in full compliance with the rule of said court, viz:

(1.) Letter marked "Delaware M 1277, 1866, dated Washington, D. C., February 13, 1868, from Thomas Murphy, sup't of Indian affairs, to Hon. N. G. Taylor, Commissioner of Indian Affairs, and seven enclosures."

(2.) Letter marked "Delaware M 1608, 1868, dated Atchison, Kans., June 6, 1868, from Thomas Murphy, sup't of Indian affairs, to Hon. Chas. E. Mix, act'g Commissioner of Indian Affairs."

(3.) Letter marked "Delaware M 82, 1869, dated Washington, D. C., Feb. 1, 1869, from Thomas Murphy, sup't of Indian affairs, to Hon. N. G. Taylor, Commissioner of Indian Affairs."

(4.) Letter marked "Delaware C 111, 1869, dated Cherokee nation, Indian Territory, February 15, 1869, from John Connor to Hon. N. G. Taylor, Commissioner of Indian Affairs."

The communication from the Court of Claims and its enclosures are herewith returned.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *May* 23, 1899.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true and literal copies of the following described documents as the same appear on file in this office, viz:

(1.) Letter marked "Delaware M 1277, 1868, dated Washington, D. C., Feb. 13, 1868, from Thomas Murphy, sup't of Indian affairs, to Hon. N. G. Taylor, Commissioner of Indian Affairs, and seven inclosures."

460 (2.) Letter marked "Delaware M 1608, 1868, dated Atchison, Kans., June 6, 1868, from Thomas Murphy, sup't of Indian affairs, to Hon. Chas. E. Mix, acting Commissioner of Indian Affairs."

(3.) Letter marked "Delaware M 82, 1869, dated Washington, D. C., Feb. 1, 1869, from Thomas Murphy, sup't of Indian affairs, to Hon. N. G. Taylor, Commissioner of Indian Affairs."

(4.) Letter marked "Delaware C 111, 1869, dated Cherokee nation, Indian Territory, February 15, 1869, from John Connor to Hon. N. G. Taylor, Commissioner of Indian Affairs."

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, on the day and year first above written.

[SEAL.]

A. C. TONNER,
Acting Commissioner.

WASHINGTON, D. C., *Feb. 13th*, 1868.

SIR: I have the honor herewith to transmit a communication of the 6th inst. from Agent Pratt, reporting relative to the matters and statements set forth in the petition of Capt. Fall Leaf and other Delaware Indians, and which was transmitted to me in a letter from the Hon. Chas. E. Mix, acting Commissioner, on the 16th ult., with instructions to refer the said petition to Agent Pratt and direct him to investigate and report on the same.

I would respectfully call your particular and early attention to the agent's report and the enclosed exhibits, as they contain a complete history relative to the procuring of a new home for the Delawares in the Indian country and their removal thereto, and I have only to add that I am familiar with these transactions and that the statements contained in the agent's report are in the main correct.

I am the more particular to have early action on this question because there are several Delaware Indians yet remaining on their old reserve in Kansas awaiting the action of the department on this subject, and who will remove immediately and join their people at their new homes if the department so directs. The roads are now good, streams easily crossed, and by going to the Cherokee country now they will avoid the bad roads and high water in the spring, and will be there in time to put in a crop this year. They have purchased their horses, mules, and supplies to be used by them in their removal. By remaining in Kansas their stock is poor and their provisions are all being used up, so that if they remain until spring a fresh supply will have to be purchased.

Four-fifths of the tribe having already removed to their new homes, intending in good faith to put in a crop the coming season, I hope the department will see that the balance of their funds coming to them for their lands and improvements will be paid to them without delay, and thus encourage and enable them to make themselves comfortable.

Very respectfully, your ob't serv't,

THOS. MURPHY,
Sup't Indian Affairs.

Hon. N. G. Taylor, Commissioner, present.

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OFFICE OF U. S. AGENCY
FOR THE DELAWARE INDIANS,
KANSAS, *February 6th*, 1868.

SIR: Your favor of January 28th, stating that a letter had been received from the acting Commissioner of Indian Affairs, Hon.

Charles E. Mix, dated Jan'y 16, 1868, with a copy of petition of Capt. Fall Leaf and other Delaware Indians, and referring the petition to me, with instructions to make a full report thereon, came to hand on the 2d instant.

In order that the department may have a clear and final understanding of the subject, I will state that at the time of the treaty of July 4th, 1866, the Delaware Indians had not selected their new homes, but were to do so in the Indian country south of the State of Kansas. Accordingly, on the 1st of September, 1866, D. N. Cooley, then Commissioner of Indian Affairs, directed that a delegation of Delaware Indians were permitted to proceed south on this mission, and enclosing directions, maps, and copies of treaty of July 4th, 1866, as also copy of Cherokee treaty of July 19th, 1866 (see exhibit marked A1), of all of which I duly informed the Delaware people. They held a council at my office on the 13th day of October, 1866, upon this subject, and appointed as delegates for that purpose the following persons, to wit: Capt. John Connor, head chief; Capt. Sarcoxie and Charles Journeycake, assistant chiefs (the latter was unable to go); Joseph Armstrong (as his substitute) and Andrew Miller, councillors, and Isaac Johneycake, U. S. interpreter, to whom I furnished all the information, maps, treaties, &c., in my possession (see exhibit marked B) and also full authority (see exhibit marked C) for their doings in the premises.

This delegation, with a large number of other Delawares, about the 22d day of October, 1866 (no delegation went in 1865, as stated in the petition), proceeded south for the purpose of selecting a new home for their people. The main body having camped near Ft. Gibson, the delegates went to Tah-le-qua, the capital of the Cherokee nation—their legislature being then in session—and there had frequent conferences with their leading men on this subject, after which they, with their people and two commissioners appointed by the Cherokees, explored the Cherokee country west of the 96th meridian and decided that there was not sufficient good land west of that meridian in a body which could be cultivated and meet the wants of their people.

They thereupon, preserving their tribal organization, selected for their future homes that portion of the Little Verdigris country "commencing at the Kansas State line where the 96th meridian crosses the same; thence east ten miles; thence south thirty miles; thence west ten miles; thence north thirty miles to the place of beginning, subject to the conditions mentioned in the Cherokee treaty with the U. S. of July 19th, 1866, and addressed a letter to that effect to Wm. P. Ross, Esq., principal chief of the Cherokee nation, under date of December 9th, 1866 (a copy of which is herewith, marked Exhibit D).

This delegation returned on the 24th of December, 1866, having been absent for this purpose about seventy days and traveling over seven hundred miles. It will be seen, therefore, that no selection was made by them west of the 96th, as alleged in the petition, but

that the contrary is true, to wit, that the selection of their
462 future homes was east of that line and made with a full knowledge that to certain limits their people would be under the constitution and laws of the Cherokee nation. The people appeared to be satisfied with the exploration and selection of their new homes, and accordingly turned out en masse to register for removal or citizenship, which took place on the 18th day of February, 1867.

A number of regular councils had also been held, and the whole matter looked into in every aspect; the question of becoming Cherokees had been frequently talked over, and it being understood that a delegation of that nation would be in Washington city that spring to perfect any arrangements the Delawares should wish to make in locating their people in the Cherokee country east of the 96°, the council of the Delaware nation, in view of this highly important matter, as well as other national matters, on the 25th of February, 1867, appointed a delegation with full powers to transact all national business, consisting of John Connor, Charles Journeycake, Isaac Johnnycake, and John Sarcoxie, as will be seen by a copy of said appointment herewith, marked Exhibit E.

They are all leading men of the nation, the latter being the son of and councillor to Capt. Sarcoxie, chief of the Turtle band.

They did not enter into stipulations with the U. S., as stated, but with the commissioners of the Cherokee nation, which stipulations and agreement *was* approved by the department and the President of the U. S. (See 15th article of Cherokee treaty, ratified Aug't 11th, 1866.) The decision of the Delaware delegation to become Cherokees in full was without diversity of opinion. Neither were they "some of the chiefs and headmen of the tribe" as insinuated, who "acted contrary to the expressed will of a majority of the members of the Delaware tribe," but they were the delegates of their people, duly appointed in full council of the nation.

The averment that "the stipulations and agreements for the disposition of our lands in Kansas and purchase of other lands in the Cherokee country was without consultation with a majority of the members of the Delaware tribe and without their consent," meaning thereby the treaty of July 4th, 1866, is entirely new and wholly untrue; that treaty was executed by direction of the chiefs and council of the nation, no member being absent.

Referring again to the petition before me, I find the names of seven hundred and twelve persons purporting to be members of the Delaware nation, who are claimed in the petition to constitute a "large majority" of the people. The Delaware nation, as it now exists, numbers in all nine hundred and eighty-five (985) souls. (Citizen class not included, 68.)

On comparing this list of names to the petition with the record of Delaware Indians in this office I find that of the 712 there are but ninety-eight (98), including women and children, who are or were members of the Delaware nation, some of whose names appear two and three times; others, again, were dead previous to the getting up of the petition, and yet others had long since abandoned their tribal

organizations, all of which will more fully appear in exhibit marked F. The names of the residue of the petitioners are not those of any Delaware Indians known in this agency, but are evidently fictitious.

You can easily test the correctness of this statement by comparing the names on the petition with the alphabetical index of the registry on file in your office.

463 In conclusion I beg leave to state that at this time four-fifths of the Delaware Indians have left this reserve and are now in the Cherokee country, or en route for it, designing to make their new homes there in accordance with the agreement entered into with the Cherokees, of whom some have already purchased farms and have made arrangements to cultivate the same the present season, and all will be there in the course of a few weeks if permitted to take their own course.

Respectfully submitting the same, I am your ob't serv't,

JOHN G. PRATT,
U. S. Ind. Ag't.

To Thomas Murphy, Esq., sup't Ind. affairs, Washington city, D. C.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
OFFICE IND. AFFAIRS,
WASHINGTON, D. C., *Sept.* 1*st*, 1866.

SIR: Under the provisions of the Delaware treaty of 4th July, 1866, copies of which are herewith, it is contemplated that those Indians may select for themselves, with the approval of the department, a new location in the Indian country, south of Kansas, amounting to 160 acres, if they wish for so much, for each person who will remove.

It appears to be necessary, before a decision can be made by the tribe as to how many will remove, that a delegation should visit the lands now open to their choice and report to their people. And it is very desirable that this should be done at the earliest possible day. You will therefore direct Agent Pratt to notify the tribe that a delegation is at liberty to proceed on this mission, and to furnish them with such credentials as they may need. He will also estimate for money necessary for their use, to be remitted from the funds of the nation. The following information should be communicated to Agent Pratt for the benefit of the exploring delegation, showing what lands are open to selection, and the map enclosed will serve to make clear the directions given.

Seminole lands: The *whole* of the late Seminole country is now open for the location of Kansas Indians, and is described as follows: "Beginning on the Canadian river a few miles east of the 97 parallel of west long., where Ockluappo, or Pond creek, empties into the same, thence due north to the North fork of the Canadian; thence up said North fork to the southern line of the Cherokee

country; thence with that line west to the 100th degree of west longitude; thence south along said parallel to the Canadian river, and thence down said river to the place of beginning.

These lands are purchased by the United States at 15 cts. per acre.

Creek lands: The Creeks have ceded to the United States the *west half* of the lands heretofore held by them, but of this west half the United States sets apart to the Seminoles a part described as follows: "Beginning on the Canadian river at the line of the Creek lands; thence north on that line to the North fork of the Canadian; thence up the North fork of the Canadian far enough to make 200,000 acres by running south to the Canadian; thence
464 down the Canadian to the place of beginning. *The balance of the west half of the Creek lands are open to location for Kansas Indians, being about 3,000,000 acres, and were purchased at 30 cents per acre.*

Cherokee lands: All of the Cherokee lands west of 96° west longitude are open to location for Kansas Indians at prices to be arranged with the Cherokees, with the approval of the dept. As to their lands east of 96° the treaty, copies of which are herewith, makes sundry provisions, to which the attention of the agent is to be directed and the Delawares informed thereof.

Choctaw lands: The Choctaws sell to the United States the country known as the leased lands, and selections for Kansas Indians may be made therein, not, however, to interfere with any prior arrangement for the refugee Indians therein.

The Choctaws and Chickasaws also invite the settlement among them of Kansas Indians, to be subject to the laws of those nations.

Quapaw lands: It may also be stated that, although no treaties have been made for the purpose, it is understood that the Quapaws are ready to cede to the U. S. for the use of Kansas Indians a considerable portion of their country.

With the information above given, it is hoped that the Delaware delegation will be able soon to report a satisfactory location for the action of the dept.

Very respectfully, your ob't serv't,

(Signed) D. N. COOLEY,
Commissioner.

Thos. Murphy, Esqr., sup't Ind. affairs, Atchison, K.

EXHIBIT B.

OFFICE OF THE U. S. AGENCY
FOR THE DELAWARE INDIANS,
DELAWARE RESERVE, KANSAS, *Oct. 13th*, 1866.

GENTLEMEN: I am directed by the Hon. D. N. Cooley, Commissioner of Indian Affairs, under date of Sept. 1st, 1866, to furnish you with such instructions and information as will enable you to proceed South and select for your tribe a new reserve in that country.

For your information all those lands in the Indian country which are open for settlement and selection, together with a map thereof, and also a copy of your treaty as well as that of the Cherokees, are herewith furnished you for your guide, and you may select lands in quantities of eighty or one hundred and sixty acres, as you may deem wise.

Let your action be prompt, your selections judicious, bearing constantly in mind the good of your people, and any treaties or agreements you may make you will see that they are properly prepared, signed, and attested, keeping one copy thereof for the benefit of yourself and nation, to be filed in this office, one copy to be forwarded to the Hon. Commissioner of Indian Affairs for his official action thereon, and one copy to be retained by the other contracting party or parties.

Having confidence that you will carry out the wishes of the
465 Government in your behalf, you will proceed upon your mission with my best wishes for your future welfare

I am, very respectfully, your ob't serv't,

(Signed) JOHN G. PRATT,
U. S. Ind. Ag't.

To Capt. John Connor, head chief. Capt. Sarcoxie, Chas. Journeycake, ass't chiefs not able to go. Joseph Armstrong, Andrew Miller, councillors. Isaac Journeycake, U. S. int'r delegation.

EXHIBIT C.

To all to whom these presents shall come, Greeting:

Know ye that by direction of the Hon. D. N. Cooley, Commissioner of Indian Affairs, under date of Sept. 1st, 1866, it has become my duty to furnish the delegates of the Delawares who may visit the Southwest for the purpose of selecting a new reservation therein all necessary and proper credentials.

Now, therefore, in accordance therewith I do hereby certify on honor that at a council of said Delawares, held at this office on this 13th day of October, A. D. 1866, it was determined by said council that the following persons were and are fully authorized to act for and on behalf of said tribe, to wit: Capt. John Conner, principal chief; Capt. Sarcoxie, Chas. Journeycake, assistant chiefs; by Joseph Armstrong (substitute), Andrew Miller, councillors; Isaac Johycake [Journeycake]?, U. S. interpreter; and that they have full, ample, and complete authority to select and secure new homes in the Indian country for said tribe, and that all their acts and doings in the premises are valid and binding upon said Delaware Indians.

Given under my hand at the office of the U. S. Delaware Indian agency for said Delaware tribe of Indians, in the State of Kansas, this 13th day of October, A. D. 1866.

JOHN G. PRATT,
U. S. Ind. Ag't.

EXHIBIT D.

CAMP ON THE CANAE,
CHEROKEE NATION, *December 9th*, 1866.

DEAR SIR: The undersigned delegates from the Delaware Indians, in company with the delegates on behalf of the Cherokee nation, have examined all the Cherokee country west of the 96° that they thought would be suitable for the Delawares to settle in, and have decided that there is not sufficient good land in a body west of that line that could be cultivated to meet the wants of the people, and have, therefore, preserving their tribal organization, selected that part of the country on the Little Verdigris or Canae, begin-
466 ning at the Kansas line where the 96° meridian crosses the same, and running thence east ten miles; thence south thirty miles; thence west ten miles; thence north to the place of beginning, subject to the conditions mentioned in the Cherokee treaty with the U. S. of July 19th, 1866.

Under the provisions of said treaty the price for the use of the same has to be agreed on by the two parties, subject to the approval of the President of the U. S.

Be so good as to present this matter to your national council for their final action, and communicate the same to the Rev'd John G. Pratt, U. S. Indian agent for the Delaware Indians, Leavenworth City, Kansas, for the action of the Delaware Indians.

Your ob't serv't,

(Sig'd) JOHN (his x mark) CONNOR,
Principal Chief.
CAPT. (his x mark) SARCOXIE, *Ass't Chief.*
ISAAC (his x mark) JOURNEYCAKE,
U. S. Interpreter.
ANDREW (his x mark) MILLER.
JOSEPH (his x mark) ARMSTRONG.

Attest:

(S'g'd) EDWARD S. MENAGE R.

To Wm. P. Ross, Esq., principal chief Cherokee nation, Tah-le-qua, C. N.

The above is a true copy.

ISAAC JOHNYCAKE,
U. S. Intpr.

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EXHIBIT E.

DELAWARE DIMINISHED RESERVE,
KANSAS, *Feb'y 25th*, 1867.

I, R. J. E. Journeycake, clerk of the council of the Delaware nation, do hereby certify that John Connor, Chas. Journeycake, Isaac Journeycake, and Jno. Sarcoxie, Delawares, were this day duly appointed and empowered by said council delegates on behalf of the said Delaware nation, to transact any and all business of a national character at Washington, D. C., with the United States or others.

(Signed) R. J. E. JOURNEYCAKE,
Clerk of the Council, Delaware Nation.

The above is a true copy.

ISAAC JOHNYCAKE,
U. S. Intpr.

467 EXHIBIT F.

Names of Delaware Indians that Appear upon a Petition Purporting to be Signed by Capt. Fall Leaf and Others.

No. on petition.	Names.	Remarks.	No. on registry roll in office of Indian affairs.
1	Capt. Fall Leaf		817
2	John Sarcoxie		96
3	George Swannock		267
4	John Swannock		358
5	Arthur Armstrong		10
6	James Simons		749
7	Jackson Simons		139
8	John Buffalo		364
9	Joseph Thompson		844
10	Sarcoxie, chief of Turtle band.		725
11	Ole me cum un		385
12	John Moses	This name is signed three time to petition—No. 12, No. 344, No. 691.	336
13	Elk Hair Moosehecund		633
15	She-She	Signed three times—Nos. 15, 484, 588.	434
17	Me mun dah heese		73
18	Ton goos qua	May be intended for	303
19	Jacob Hill		229
20	Tup per hick om	May be intended for	307
21	Wau sut tund		486
22	John Meconhecon	May be meant for	16
23	John Rogers	Signed again—No. 43	816

Exhibit F—Names of Delaware Indians, etc.—Continued.

No. on petition.	Names.	Remarks.	No. on registry roll in office of Indian affairs.
24	Walpa Ke hing	May be intended for. This name is signed twice.	825
25	Butcher	Signed again—593	833
26	Pa che ka toowha		712
27	Que che po coowha	May be meant for	619
28	E lah		156
29	E lah tut		615
32	Dick Brown	Signed again—439	278
33	James Swannock		33
34	James Wilson	Signed again—662—with spelling changed.	7
35	Simon Ketchum	Signed again—No. 453	681
36	John Williams		439
37	Forrest Mann		144
38	Len no see see	Signed again—No. 246	127
39	Pol le toon Moonshine		914
40	Na och poorholland	May be meant for	888
41	Old Horse		187
44	Tus cus quecarpi		689
46	Colonel Jackson		260
47	Soldier	Signed again—No. 558	679
48	To o wha	Probably intended for	889
49	Thomas Walker	Signed again—No. 346	884
51	Big Field	Signed again	352
52	William Swannock	Signed again—No. 334	49
53	General Jackson		252
55	Joe Wilson	May be intended for	520
56	Kos ke coo wha		232
57	Jacob Easy	Signed again—No. 242	461
59	Lat Chase		92
60	John Thomas	Signed again—344	546
63	Best Quality	Signed again—455	682
65	Four Miles		22
67	Wen Thom bea she ka	Supposed meant for	886
68	James Snake	Signed again—573	154
69	Young Wilson		236
72	Delaware Charlie		119
73	Moose ha que nund	May be meant for	707
75	Ki ki she no	May be intended for	610
78	Malitia Hill	Signed again—No. 530; spelling changed.	1
81	Shanghigh Swannock		843
82	Jacob Parks		713
85	Capt. Moonshine		297
91	Toe lo wha		437
96	Tel le car pi		778
97	Yellow Leaf	Signed again at No. 618	739
102	Wah mah a lah toon	May be meant for	877
105	Jack Ned	Abandoned the Delaware tribe several years ago, their lands reverting to the nation.	1163
107	Lucinda Ned		1152
108	Susan Ned		1157
114	Nancy Ned		1164
122	Wild Cat	Signed again—629	802
258	Julia A. Beaver		284

Exhibit F—Names of Delaware Indians, etc.—Continued.

No. on petition.	Names.	Remarks.	No. on registry roll in office of Indian affairs.
263	468 Wilson Sarcoxie		199
274	Jackson Reddick		226
286	Jacob Eneas		728
306	Martin Beaver		957
315	Lieut. Jewsharp	Dead	221
342	Young Martin		691
399	Big Bird	Dead	492
403	Ben Holland		587
408	Top of the Hill	Has been dead about ten years	
416	George Wilson		197
442	Star Brown		960
449	Benjamin Johnycake		738
454	Alexander Journeycake		160
458	Nancy Armstrong		445
470	Frenchman		376
508	William H. Shelah	His alias, "Little Jack," is also signed to petition supposed to be meant for.	338
539	Flat Foot		603
544	John Longbone	Dead 3 or 4 years	1019
563	White Turkey		74
566	Dutch Turkey		77
615	John Noe	Signed again with slight change in spelling—No. 121.	529
635	Tom Hill		984
655	John Shawnee		263
656	John White		264
657	Betsey Shawnee		262
684	James Harrison		905

The above is a complete list of all the names of persons belonging to the Delaware nation—men, women, and children—being 98 in number, found on the petition of Fall Leaf, Sarcoxie, and others, including 4 who have long since abandoned the nation, 4 who were dead before the petition was gotten up, and also 22 whose names appear signed to the petition 2 and 3 times each.

OFFICE SUPT. IND. AFFAIRS,
ATCHISON, KS., *June* 6, 1868.

SIR: I have the honor to inform you that on the 2d ult. Capt Fall Leaf, and those Delaware Indians who had remained on their old reservation in this State (because they were dis-atisfied with the arrangements made by their duly authorized delegates, which arrangements provided for them a new home in the Cherokee country east

of 96) called on Commissioner Taylor and myself at Lawrence, Kans. on our way to the Osage reservation. These Indians laid their grievances before us, and after thoroughly explaining to them their present condition, and future prospects, they agreed to abide by the conditions of the contract above mentioned, they being very destitute and unable to remove to the Cherokee country, without assistance; the Commissioner instructed their agent to pay over to them, the balance due them from the sales of their lands and improvements, and after the performance of this service, to proceed to the Cherokee country east of 96 where four fifths of the Delawares had already located and there pay to them the balance due them for their lands and improvements in Kans. and to pay also to the Delawares their annuity for the 1st & 2nd qrs. 1868. The agent performed the first part of these instructions, and on our return from the Osage reservation met
469 him on the 30th ult. on his way to the Cherok country to carry out the balance. While in council with the Osages several delegations of Delawares called on us, (those of this tribe who had gone east of 96) and had in good faith endeavored to carry out the conditions of the agreement between their representatives and the Cherokees, were well pleased with the country and their condition, many of them remarking that they had done more good hard work since their arrival in the country than they had done on their old homes in Kans. in that number of years and one of the principal reasons given was, that they could not get whisky and consequently per force were sober, industrious and happy. Capt. Sarcoxie one of the old chiefs of the Delawares, and some of his followers, called also on us, he has been dis-atisfied with the contract before alluded to, and with a few of his people located on Cane creek, Cherokee country west of 96, the principal cause of his dissatisfaction was, his objection to have his tribe merged into and become a part of the Cherokee nation (as all Indians have to do who locate east of 96) and thereby lose his national organization, name and power, on account of the near proximity of his people to the wild Indians one of his young men had been killed & scalped and several of his ponies stolen, per consequence he was very much disgusted and dissatisfied, the advantages to be derived from a strict compliance with the contract heretofore referred to and the troubles and disadvantages that were sure to follow a non-compliance, convinced the old man he had been misled and that matters had not been properly represented to him He left saying he would move his band east of 96, and comply with the contract. On our return home we met the last remnant of the Delawares on their way to their new homes; so to-day there is not a single Delaware in Kansas as an Indian. Some few have remained but they have become citizens according to the provisions of their treaty of July 4, 66 and thus this once wealthy & powerful tribe are no longer to be known by the old and proud name they bore; but have voluntarily chosen to become citizens of the Cherokee nations by which arrangement, the Government will be saved the expense of the management of one Indian agency, in this superintendency.

The agent of the Cherokees, will in future take care of and manage the affairs of the Delawares.

Very resp'y, your ob't servant,

THOS. MURPHY,
Supt. Ind. Affairs.

Hon. Chas. E. Mix, act'g Commissioner, Washington, D. C.

WASHINGTON, D. C., *Feb'y 1st*, 1869.

SIR: I have the honor to transmit herewith a letter of the 16th inst., from Agent Pratt calling attention to a certain contract or agreement made by the representatives of the Cherokee and Delaware Indians in April, 1867, by the terms of which the Delawares who removed to the Cherokee country were to be merged into and become a part of the Cherokee nation.

Very respectfully, your ob't serv't,

THOS. MURPHY,
Supt. Ind. Affairs.

Hon. N. G. Taylor, Commissioner.

470 OFFICE OF THE U. S. AGENCY FOR THE DELAWARE INDIANS, *January* 16, 1869.

SIR: It appears from information received from Capt. John Connor and Charles Journeycake, chiefs of the Delaware tribe of Indians now residents of the Cherokee nation, that C. N. Vann and Wm. Sunday or Lunday had been appointed in December last commissioners by the Cherokee national council to confer with the Delawares in reference to the arrangement entered into by the delegates of the respective parties at Washington in April, 1867, by which the Delawares were to be incorporated into the Cherokee nation and to urge upon the Delawares the necessity of completing the various provisions of that instrument at an early day.

In accordance with their request the chiefs of the Delawares desire that I should file in your office a list of all those Delawares who elected to remove to the Indian country under the provisions of the treaty of July 4, 1866, and also the "additional list" provided to be made by virtue of the arrangement of April 8, 1867, between the respective parties, and to furnish a copy of such lists to Col. Lewis Downing, now in your city.

I will therefore inform you that in April, 1867, a list of those Delawares who elected to remove to the Indian country under the provisions of the treaty of July 4, 1866, was filed in your office, which formed the basis of the arrangement then made with the Cherokees, which, together with such "additional list" as might be made by the Delaware council within "thirty days thereafter," should form the basis of calculation as to the Delawares. Such "additional list" was filed in your office as well as the removal list heretofore referred to in my report of Aug. 6, 1867, prefaced "Registry, allotment, valuation, etc., Delaware diminished reserve treaty, July 4, 1866." As

will appear upon reference thereto, these lists are marked A and B, respectively, and may be found upon pages 1 to 55 and 56 to 58, inclusive, and the total number removing under said treaty and arrangement was 985 persons, as appears upon said lists.

I deem it unnecessary to furnish a copy of the lists, as the chiefs request and respectfully submit the matter for your further consideration.

I am, sir, your ob't serv't,

JOHN G. PRATT,
United States Agent.

To Thomas Murphy, Esq're, supt. Indian aff'rs, Atchison, Kansas.

CHEROKEE NATION, INDIAN TERRITORY,
February 15th, 1869.

Hon. N. G. Taylor, Comm.

DEAR SIR: It come in hand that I must write a letter to you at present. That I shall draw your attention to those treaties that we have contracted as Delaware nation that was in the State of Kansas with the United States.

The Delawares on their part have always promptly complyed with their agreements on every part, say the treaty 1860 and again the last treaty July 4, 1866 which was concluded again, and according
471 to their last treaty we have abandon our old homes in Kansas which we have enjoyed nearly fourty years, and we are here in the Indian Territory Cherokee nation. We cannot make any more treaties with you as our great father. Now I look to you on the behalf of my people to carry out the fulfillments of our treaty with the United States. When we made a treaty in May 30, 1860, what did these my people as Delawares nation in Kansas get for us signing of that treaty we sold larg tract of land, and the rest divided into eighty acre lots to each individual members of the Delaware nation, and it was further agreed that we should as the Delaware nation get pay for all the stolen stock and the timber depredations and that never was carried out; then we as Delaware nation it come in hand another treaty must be made and we did make another treaty in July 4, 1866 with the United States according to the request of the United States Government, the people as was know as Delaware nation that was in Kansas have promptly complyed with their agreements on every part. Now I look to you as I state above to turn your attention to those treaties and have them carried out. We have nowhere else to look only to our great father Uncle Sam which is well able to see well to his loyal and obedient children. We as your subjects needed the moneys which is justly ours in every due time April and October semi-annually which I no need to specify the different points of the treaty stipulations for you have all these plain facts that is prescribed on those specified treaties which you may find in Indian Office in the city of Washington D. C.

Now to the present affairs of these people as Delaware nation I can safely say that they are in actual starvation some of them have already sold their teams and wagons to get provisions with to live on, teams that some depended on to prepare their grounds for cultivation this coming spring, some sell one thing and some another as long as they have anything. The result of all this sufferings of these people in the first place the severe drougth last season and the delay of our money which was due last fall, and the people went in dept here the merchants that has been tolerated to come in charge vast amounts for what they got to sell corn meal three dollars per bushel and other things in proportion. The people without any means were compel to take those things at three or four prices or else starve which those said merchants are aiming for this money thats due the said Delaware people.

I plainly state these things and request you to *to* see to them without any further delay I ask this and take the privilege to speak as the head chief of the Delaware nation as was known that was located in the State of Kansas and this without any excuse, if I am in the Indian Territory with the Cherokee nation I and my people feel the need of fair and just dealing from our great father Uncle Sam it matters not where we are.

I am your obedient servant,

HON. JOHN CONNOR,
Head Chief of the Delawares.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney,
472 and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A letter signed "A. C. Tonner, acting Commissioner," written at the Department of the Interior, Office of Indian Affairs, Washington, May 3, 1899, and addressed to M. E. Harby, New York, which letter is in relation to the disposal of lands in the Indian Territory.

A map of the Indian Territory, compiled under the direction of Hon. John H. Oberly, Commissioner of Indian Affairs, by C. A. Maxwell, chief law and land division, Indian Bureau, John Olberg, draftsman, in the year 1889.

Dated New York, June 7, 1899.

WALTER S. LOGAN,
Attorney for Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *July* 5, 1899.

The honorable the Chief Justice of the Court of Claims.

SIR: In response to the order of the Court of Claims, in the case of The Delaware Indians *v.* The Cherokee Nation, No. 21139, requesting that court be furnished certain papers—or duly authenticated copies of same—for use as evidence on the trial of the above-entitled cause, supposed to be on file in the Interior Department, as set forth in the motion of plaintiff accompanying said rule, you are advised that said order of court and accompanying rule were referred to the Commissioner of Indian Affairs on the 24th ultimo for consideration and report.

The department is now in receipt of the report of the acting Commissioner of Indian Affairs, enclosing the certified copies as requested in said rule, which, together with a copy of the report of the acting Commissioner and said rule and motion, are enclosed herewith.

Respectfully, E. A. HITCHCOCK, *Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *June* 30, 1899.

The honorable the Secretary of the Interior.

SIR: Pursuant to direction contained in your letter of June 24, 1899, the office has had prepared and encloses herewith, duly certified, a copy of a letter dated May 3, 1899, and addressed by this office to Mr. M. E. Harby, New York, in relation to the disposition of lands in the Indian Territory; also a copy, duly certified, of a map of the Indian Territory compiled under the direction of Hon. John H. Oberly, Commissioner of Indian Affairs, by C. A. Maxwell, chief of the law and land division, Indian Bureau, in 1889, both of which papers are called for by a rule of the Court of Claims upon
473 the Secretary of the Interior, which was transmitted with your letter. Said rule is returned herewith, as you direct.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *June* 30, 1899.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original as the same appears of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *May* 3, 1899.

M. E. Harby, Esq., attorney at law, 27 William St., New York, N. Y.

SIR: This office has received in due course of business and has fully considered your communications of January 9, January 11, and February 16, 1899, wherein you request to be advised as to (1) what lands have been sold by the United States to the Indians, (2) what lands have been sold by Indians to the United States, and (3) what lands have been sold by Indians to Indians, in the Indian Territory, Oklahoma, and Kansas, at less than $1 per acre.

You desire to know the acreage of the lands conveyed, how the lands are situated, the dates of transfer, dates of transfer of consideration, record of transfer, &c., and request to be supplied at your expense with a map showing the lands conveyed, prepared in the particular manner indicated in your letters.

Said information and map is required, as you state, for use in the suit of The Delawares *vs.* The Cherokee Nation, now pending in the Court of Claims.

In considering these matters it is proper to begin with the Indian Territory, the creation of which, excepting that part embraced within the Quapaw agency, was effected by a number of treaties entered into at different times between the United States and (1) the Cherokee Indians, (2) the Muscogee or Creek Indians, and (3) the Choctaw Indians.

The manner in which said tribes became possessed of lands in the Indian Territory and the various dispositions made of such lands is so fully treated of in Senate Ex. Doc. No. 78, 51st Congress, 1st session, as to preclude the necessity of repetition here. A copy of said document, as you will undoubtedly remember, was informally supplied you by this office.

474 I. The Cherokees.

Disposals of lands by the Cherokees were effected under the provisions of article 16 of the treaty of July 19, 1866, (14 Stats., 804), which article is as follows:

"The United States may settle friendly Indians in any part of the Cherokee country west of the 96th degree, to be taken in a compact form in quantity not exceeding one hundred and sixty acres for each member of each of such tribes thus to be settled; the boundaries of each of said districts to be distinctly marked and the land conveyed in fee simple to each of said tribes, to be held in common or by their

members in severalty, as the United States may decide. Said lands thus disposed of to be paid for to the Cherokee nation at such price as may be agreed on between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President. The Cherokee nation to retain the right of possession of and jurisdiction over all of said country west of 96th degree of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied."

In pursuance of the provisions of said article 16, and of the act of June 5, 1872 (17 Stats., 228), a tract of country bounded on the east by the 96th degree west longitude, and on the south and west by the Creek country and the main channel of the Arkansas river, was set apart for the Osage and Kansas Indians, containing 1,566,784 acres, and was paid for to the Cherokees by the Osages at 70 cts. per acre, amounting to $1,096,748.80 per act of March 3, 1873. Said tract was conveyed by the Cherokees to the United States in trust for the benefit of the Osage and Kansas Indians, by deed dated June 14, 1883, in accordance with an item in the act of March 3, 1883 (22 Stats., 624). Said deed is recorded in volume 6, Indian deeds, one of the records of this office.

Disposition of Cherokee Lands West of Arkansas River.

The total area of Cherokee lands lying west of the Arkansas river originally amounted to 6,574,486.55 acres. On June 23, 1879, in pursuance of the act of 1872 (17 Stats., 190) and of the act of 1876 (19 Stats., 120) the President appraised the value of said lands, as follows:

6,344,572.51 acres, at 47.49 cts. per acre.....	$3,013,037.485
230,014.04 acres, at 70 cts. per acre (Pawnee).....	161,009.828
	3,174,047.313

The data furnished by the commission appointed to appraise said lands, upon which the President fixed the value thereof, and other matters connected therewith, will be found printed in H. R. Ex. Doc. No. 54, 47th Congress, 2nd session.

Under article 16 of the treaty of 1866, before referred to, the Cherokees conveyed to the United States certain tracts of land in the Cherokee country lying west of the 96th degree west longitude by separate deeds, each dated June 14, 1883, recorded in volume 6, Indian deeds (one of the records of this office), in trust for the use and benefit of the tribes named, viz:

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Tribe.		
Pawnees	230,014.04	Act Ap'l 10, 1876 (19 Stat., 28); act M'ch 3, 1883, (22 Stat., 624).
Otoes and Missourias	129,113.20	Act M'ch 3, 1881, sec. 5, 21 Stat., 381; order Sect'y Int., June 5, 1881; act M'ch 3, 1883 (22 Stat., 624).
Poncas	101,894.31	Act Aug. 15, 1876 (19 Stat., 192); act M'ch 3, 1877 (19 Stat., 287); act May 27, 1878 (20 Stat., 76); act M'ch 3, 1883 (22 Stat. 624).
Nez Percés	90,710.89	Act May 27, 1878 (20 Stat., 74); act M'ch 3, 1883 (24 Stat., 624).

The consideration for this land consisted in an appropriation of $300,000 under act of March 3, 1883, which sum was deducted from the price paid for the Cherokee Outlet under the agreement of Dec. 19, 1891, as were also accounted for the appropriation of $300,000 per act of June 16, 1880; the sum of $48,389.46 paid for the lands assigned the Poncas appropriated by act of March 3, 1881, and $75,000 appropriated by the act of October 19, 1888, to pay certain freedmen and Delaware and Shawnee Indians their proportion of the amount appropriated by said act of March 3, 1883.

II. Muscogees or Creeks.

By the 3rd article of the treaty of June 14, 1866 (14 Stats., 786), the Creeks ceded "to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south," containing 3,402,430.48 acres, for which lands the United States paid for at the rate of 30 cts. per acre. See act of July 7, 1884 (23 Stats., 212).

The dispositions made of the lands ceded by the Creeks by the treaty of 1866 will be found set forth in detail on pages 17 to 21, inclusive, of Senate Ex. Doc. No. 78, 51st Congress, 1st session.

III. Seminoles.

The Creek nation, by article 1 of the treaty of August 7, 1856 (11 Stats., 699), ceded and conveyed to the Seminole Indians a portion of the Creek domain, included in certain stated boundaries, for and in consideration of the moneys, &c., stipulated to be paid in said treaty.

The Seminoles, by 3rd article of the treaty of March 21, 1866 (14 Stat., 756), ceded to the United States their entire domain, being the same lands ceded to them by the Creek treaty of 1856, and by the same article the United States ceded to the Seminoles a tract of country containing 200,000 acres out of the cession made by the Creek treaty of June 14, 1866 (14 Stat., 786), before referred to.

These transfers were made for the consideration named in said treaties.

For statement of dispositions of lands ceded by the Seminole treaty of March 21, 1866, see pages 22 and 23, Senate Ex. Doc. No. 78, 51st Congress, 1st session.

476 III. Choctaws and Chickasaws.

By article 9 of the treaty of June 22, 1855 (11 Stat., 611), the Choctaws relinquished to the United States all their interest in and to all lands west of the 100 degree west longitude, and the Choctaws and Chickasaws *leased* to the United States all that portion of their common territory west of the 98 degree west longitude, containing about 7,700,000 acres, for the permanent settlement of the Wichitas and such other tribes or bands of Indians as the Government desired to locate thereon.

In consideration of said relinquishment and lease the United States agreed, per article 10 of said treaty, to pay to the Choctaws $600,000 and to the Chickasaws $200,000.

By article 3 of the treaty of April 28, 1866 (14 Stat., 769), the Choctaws and Chickasaws, in consideration of the sum of $300,000, ceded to the United States the lands leased by article 9 of the treaty of 1855. As to the legal effect of this cession, see "The Choctaw and Chickasaw Nations *vs.* The Wichita and Affiliated Bands and The United States," in the Court of Claims, not yet reported.

The foregoing constitutes all of the disposals of Indian lands within the Indian Territory at less than $1 per acre.

It is not deemed necessary to include in this communication the data called for with respect to disposals of Indian lands in Kansas. In a communication dated June 28, 1877, addressed to Hon. S. J. Crawford, this office furnished a statement showing all Indian lands in Kansas at the time of its organization as a Territory (May 30, 1854); the disposition of said lands; the area of each Indian reservation on January 29, 1861, the date of the admission of Kansas into the Union as a State; the number of acres in each reservation sold, and the price paid, &c. It is understood that you already have a copy of this communication in your possession.

With regard to the map asked for by you, the office would state that it is not deemed practicable to furnish same.

Very respectfully, A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *June* 30, 1899.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true and literal copy of a map of the Indian Territory compiled under the direction of Hon. John H. Oberly, Commissioner of Indian Affairs, by C. A. Maxwell,

chief law and land division, Indian bureau, John Alburg, draftsman, in the year 1889, as the same appears on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

A. C. TONNER,
Acting Commissioner.

[Map omitted from printed record.]

477 *Motion for a Rule upon the Honorable Secretary of the Interior.*

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A letter marked "Gen. Supt. J. 539," dated Department of the Interior, August 18, 1863, signed J. R. Usher, Secretary, addressed to W. P. Dole, Esq., Leavenworth, Kansas.

A letter written by Hon. William P. Dole, Commissioner, to F. Johnson, Esq., at Quindaro, Kansas, dated Department of the Interior, Office of Indian Affairs, March 29, 1864. A copy of this letter is contained in Letter Book 73 of January 9, 1864, to April 23, 1864, and is found therein at page 390. This book is on file in the Office of Indian Affairs. In this latter there is contained an acknowledgment of a communication from F. Johnson of the 21st inst., "stating the wishes of the Delaware chiefs in regard to the purchase of land from the Cherokees." Your petitioners request that this communication from F. Johnson be transmitted to the above court in connection with the said letter signed W. P. Dole.

A letter marked "Delaware M 737," written at the office of superintendent of Indian affairs at Atchison, Kansas, on August 14, 1867, signed Thomas Murphy, and addressed to Hon. Charles E. Mix, at Washington, D. C.

Together with this letter was transmitted a "book containing a complete and corrected registry of the Delaware Indians; * * * also an index to the said book, with Agent Pratt's explanatory report." Your petitioners request that this book and index be transmitted to the above court, together with the said letter of Thomas Murphy.

A letter dated Department of the Interior, Office of Indian Affairs, October 14, 1867, signed C. E. Mix, acting Commissioner, addressed to Hon. O. H. Browning, Secretary of the Interior. This letter is on file in the Office of Indian Affairs, but has no file mark. It is colloquially referred to as "office letter."

WALTER S. LOGAN,
Attorney for Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *October* 9, 1899.

The honorable the Chief Justice of the Court of Claims.

SIR: In response to the order of the Court of Claims in the case of The Delaware Indians *vs.* The Cherokee Nation, No. 21139, requesting that the court be furnished certain papers, or duly authenticated copies thereof, for use as evidence on the trial of said case, supposed to be on file in this department, as set forth in the motion of the plaintiff accompanying said rule, you are advised that said order of the court and accompanying rule were referred to the Commissioner of Indian Affairs on July 14, 1899, for consideration and report.

478 The department is now in receipt of the report of the acting Commissioner, enclosing the certified copies of all the papers desired, except a certain "book containing a complete and correct registry of the Delaware Indians; * * * also an index to the said book, with Agent Pratt's explanatory report," which book the acting Commissioner states is not transmitted, as the representative of the Delaware Indians in this city has informally advised his office that it may not be needed in the pending suit.

The certified copies and a copy of the report of the acting Commissioner are enclosed herewith.

Respectfully,

THOS. RYAN,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *October* 6, 1899.

The honorable the Secretary of the Interior.

SIR: Referring to department letter dated July 14, 1899, enclosing a rule issued July 11, 1899, by the Court of Claims in case No. 21139, The Delaware Indians *v.* The Cherokee Nation, requesting that said court be furnished with certain documents supposed to be on file in the department for use as evidence on the trial of said case, I have the honor to transmit herewith duly certified copies of the following correspondence, on file in this office, in partial compliance with the request contained in said rule:

(1.) Letter marked "Cen. Supt. I 539," dated Dep't of the Interior, Aug. 18, 1863, signed by J. R. Usher, Secretary, addressed to Wm. P. Dole, Leavenworth, Kansas.

(2.) Letter written by Wm. P. Dole, Com'r of Indian Affairs, to F. Johnson, U. S. Indian ag't, Delaware agency, Quindaro, Kans., dated Wash'n, D. C., March 29, 1864, as the same appears of record in Letter Book 73, page 390.

(3.) Letter marked "Del. J. 485," dated March 21, 1864, from F. Johnson, U. S. Ind. ag't, Delaware agency, Kansas, to Wm. P. Dole, Com'r of Indian Affairs, Wash'n, D. C.

(4.) Letter marked "Del. M. 737," dated Aug. 14, 1867, from Thomas Murphy, supt. Ind. affairs, Atchison, Kansas, to Chas. E. Mix, act'g Com'r of Ind. Affairs, Wash'n, D. C.

(5.) Letter written by Chas. E. Mix, act'g Com'r of Ind. Affairs, dated Oct. 14, 1867, to the Secretary of the Interior, as the same appears of record in Report Book 16, page 478.

In said rule request is made for a certain "book containing a complete and corrected registry of the Delaware Indians; * * * also an index to the said book, with Agent Pratt's explanatory report." This book is not transmitted with this report, as the representative of the Delaware Indians in this city has informally advised this office that it may not be needed in the pending suit.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

479 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *October* 6, 1899.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file and of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.] A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR, *August* 18*th*, 1863.

SIR: I enclosed on Saturday, the 15th, a draft of the proposed treaty with the Delawares. I have intended to propose a liberal treaty to them, paying them all their claims, of every character, in the expectation that they would the more readily accept it. It guards their rights in every respect that occurred to me. The treaty will be of no effect until their new homes are selected and purchased, and then the Delawares will have twice the quantity of land they now have, and $1.25 per acre beside.

The advantages of the proposed treaty to them will occur to you as you read it; and you will please express to the Delawares that it has been prepared by me with a desire to guard their interest and do everything that I consider the best for them.

If you meet the southern Indians and conclude a treaty with them for territory for the Delawares, you will see that it contains the condition that they and other Indians in Kansas will consent to make their homes upon it. Capt. John Conner has spoken of the country upon the Verdigris river as being very desirable. If the

Delawares will name a place, you will do well to treat for it, if you can.

The draft sent will be your guide for treating with the Pottawatomies and other Indians of Kansas for their removal.

You will perceive what prices can be paid for the land to be treated for. It cannot exceed 37½ cents per acre and should not exceed 10 cents, unless we can have the choice of selection, taking only such tracts as are suitable for homes, being well watered and timbered and of good soil.

Very respectfully, your ob't serv't,

J. P. USHER, *Secretary.*

Wm. P. Dole, Esq., Leavenworth city, Kansas.

DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS, *March 29th*, 1864.

F. Johnson, Esq., U. S. Indian Affairs, Quindaro, Ks.

SIR: Your communication of the 21st instant, stating the wishes of the Delaware chiefs in regard to the purchase of land from the Cherokees, is received.

480 In reply I have to say that John Ross, head chief of the Cherokees, and a portion of the delegations are still here and it is now uncertain just how soon the business that brought them here will be so far completed as to admit of their return home, but when they do so they will visit the Delawares to confer with them.

I am assured by Mr. Ross of the willingness on the part of the Cherokee- to make a treaty with the Delaware- and let them have a portion of the Cherokee lands. If it shall be desirable and necessary for a delegation of the Delawares to visit the Indian country with a view of making a suitable location for themselves, they are authorized to do so and you are authorized to go with them, and you with the delegation will accompany John Ross on his return to that country, when he shall have first had a conference with them in Kansas.

For the purpose of this exploration the Delawares are authorized to make an appropriation of an amount sufficient to defray the expenses.

Very respectfully, your ob't serv't,

W. P. DOLE,
Commissioner.

DELAWARE AGENCY, KANSAS, *March 21st*, 1864.

SIR: I am requested by the chief of the Delaware tribe of Indians to inform you that they received your letter stating that John Ross, head chief of the Cherokees, will shortly visit the Delawares in Kansas on his way home to the Indian country, and that the Delawares will be enabled to purchase land of the Cherokees.

If Mr. Ross has not the power to consummate a treaty, *and it is necessary for the Delawares to visit the Indian Territory for that pur-*

pose, they wish to know if they can have the privilege of doing so; also, whether they can have the privilege of making an appropriation to pay the expenses of the trip, and also whether you will permit me to go with them.

Very respectfully, your ob't serv't,

F. JOHNSON, *Ind. Agent.*

Hon. Wm. P. Dole, Com'r of Ind. Affairs, Washington city.

OFFICE SUPT. IND. AFFAIRS,
ATCHISON, KANS., *Aug't 14th*, 1867.

SIR: I have the honor herewith to transmit a book containing a complete and corrected registry of the Delaware Indians—together with the number and description of their respective allotments—and the aggregate valuation of said allotments and improvements thereon. Also an index to the said book, with Agent Pratt's explanatory report of the same.

As it is the particular desire of these Indians to remove to their new homes in the Cherokee country the coming fall, I respectfully request that the dep't will, without delay, take the necessary steps to procure for them from the Missouri River Railroad Com-
481 pany the money due them for their lands and improvements, and thus enable this people to carry out their expressed wishes to remove this coming fall.

Very respectfully, your ob't serv't,

THOS. MURPHY,
Supt. Ind. Affairs.

Hon. Chas. E. Mix, acting Commissioner, Washington, D. C.

P. S.—I also enclose the notice given by the Delawares in council to their agent, that they are now ready to remove to the Indian country and vacate their lands in Kansas as soon as they get their money for the same, which notice is marked A.

T. MURPHY, *Supt., &c.*

OFFICE OF THE U. S. AGENCY
FOR THE DELAWARE INDIANS,
DELAWARE RESERVE, KANSAS, *August 6*, 1867.

SIR: By the provisions of the 6th article of the treaty of July 4, 1866, between the Delawares and the United States, it is provided that "whenever the Department of the Interior shall be notified by council, through the agent, that any of the Delawares who hold land in severalty are ready to remove, at the same time describing their allotments, there shall be paid to each such persons the value of his allotment and that of his family, to enable him to remove to and improve his new home."

I was present at the council of the Delawares, held May 2d, 1867, when the subject of removal was fully discussed, and it was decided

unanimously that as a nation they were ready to remove to the Indian country, and instructed their clerk to so notify the Government, through the undersigned. His notice to this effect, marked A, is herewith transmitted. In compliance therewith I hereby forward book, marked "Registry, allotment, valuation, etc., Delaware Diminished Reserve, Kansas, treaty, July 4th, 1866," with index, containing all the reports required of this office, in a connected form, which I have deemed necessary to carry out the various provisions of the treaty, and thereby enable the department, at the earliest practicable time, to disburse to the Indians their respective amounts.

Lists A and B, pages 1 to 57, inclusive, exhibits the names of all Delawares who have elected to remove from their present homes and vacate their lands in Kansas, together with a description of the same, the value thereof and the valuation of the improvements thereon, and includes those who have no land. These lists also exhibit the names, allotments, description, and valuation of the land and improvements thereon of children of Delaware blood born since the allotment of 1860, as required by the 3d article of the treaty of July 4th, 1866, for which see special report marked "I," pages 103 and 110, inclusive.

List A indicates the names of those on registry, filed at Washington, D. C., April, 1867, with such corrections in numbers and names as identify the parties or describe the present allotments.

List B shows such persons as were either omitted from not being present at the registry or were born since the same was taken, or have since been adopted by the Delaware council as reported to me, or who have elected to become citizens and were so registered, but have since voluntarily elected within the thirty days agreed upon between the Delawares and Cherokees to remove with the tribe under said treaty, opposite each of whose names appropriate explanatory remarks have been made. The last list was provided to be made by the Delawares and Cherokees in April, 1867, on file in your office. The valuation of the improvements on each allotment of the various reports is copied correctly from the reports of the commissioners appointed by the Government to make said appraisement, and is included to give completeness to the statements.

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I am also, by the latter part of the 3d article of the treaty of July 4, 1866, required to allot to children of heads of families who have elected to dissolve their tribal relations and become citizens of the United States, and who are entitled to allotments, such allotments as they may select from those who elected to remove, which selections (see Special Report, marked "L," pages 117 to 118, inclusive) are by the terms of the treaty reserved from the sale, thereby leaving those Indians whose lands have been so selected without any land whatever. As this would not be in accordance with the spirit and intent of the treaty I have accordingly reallotted, out of the public land, to each one whose allotment has been so selected an equivalent for the same, preserving their original allotment numbers, all of which will be found properly noted in the

various statements, the special report of which is marked "K," pages 113 and 114, inclusive. In this manner the purchaser will not be at all affected, and at the same time the Indian receive his money, with the balance of the tribe, to enable him to remove and to improve his new home. To all of which the attention and approval of the department is called.

In the removal list are several Delawares whose original allotments were so far short of eighty acres to which they were entitled as to do manifest injustice to them now that they are about to remove. In a manner to equalize the same and give more general satisfaction I have taken the liberty to add to the allotment of each such, out of the public lands, an amount approximating to what they were originally entitled to receive. This number is small and the additions are properly noted in the column of remarks. (See Special Report marked "M," page 119.)

In list C, at pages 60 to 69, inclusive, will be found a correct statement of Delaware Indians deceased, who belonged to families of this removing class.

In list G, at page 93, a similar statement of those who belonged to the citizen class, and opposite their names on said lists the number and description of their respective allotments, the value thereof, and the valuation of the improvements thereon.

The treaty of May 30, 1860, article 2, provides that the Secretary of the Interior shall make such rules and regulations as he may deem necessary or expedient respecting the disposition of any of said tracts (allotments) in case of the death of the person or persons to whom they may be assigned, so that the same shall be secured to the families of such deceased person. No such regulations are on file in my office, but have been called for under date of April 3d, 1867.

List D, pages 72 to 75, inclusive, contains a statement of the property abandoned by the parties to whom the same was allotted, with the number of the allotment, a description thereof, the value and valuation of the improvements thereon. Said property was allotted to Delaware Indians under the treaty of May 30, 1860, who
483 either have always been absent from the Delaware reserve or having temporarily occupied the same, removed away from the nation and are not now recognized as a part of the Delaware people by the council and do not receive annuities except, however, registry numbers 1197 and 1198, the first of which appears to be an error in relocation and the second improperly allotted. I have therefore placed them in this list. The disposition of these lands is provided for in the treaty of July 4, 1866.

List E, pages 77 to 79, inclusive, exhibits the number of acres, together with a description and value thereof and valuation of the improvements thereon of public lands not allotted.

List F, pages 85 and 86, contains a statement of the persons who originally elected to become citizens and were so registered, with the addition of the name of Ida M. Collins, an infant born since the registry of Feb'ry 18, 1867, was taken, together with the ages,

number of their respective allotments and description of the same, and the *original* number of the allotment selected from lands of removing Delawares, with the valuation of the improvements thereon, with marginal references to whom to be paid; also references to those who have since voluntarily elected to remove with the tribe and were placed on the list accordingly.

List N is a condensed table denoting the number of acres, the value thereof, and the valuation of the improvements on the Delaware diminished reserve in the State of Kansas. See page 121.

In addition to the above, the Delawares claim the islands in the Missouri river, opposite to the original Delaware reserve, and also the larger part of the military reservation of Fort Leavenworth; and, as they are upon the eve of a departure from the State of Kansas, they are desirous to have their claims therefor acquired under the treaty of 1829 adjudicated.

Upon a careful examination of the plots of this reserve I have reason to believe that you may possibly find a trifling error in acres in the allotment of 1860. I will therefore cite you to allotments 776 and 547, sections 18 and 19, town. 12, range 21, and also allotment 863 and SW. fr. ¼ of NW. fr. ¼ section 6, town. 12, range 23.

The chiefs and councillors are very anxious to remove to their new homes this fall so that during the winter they can be building houses and preparing fields to till the next year. To enable them to do so the money due the people should be paid to them as early as October next.

I am, sir, your most ob't serv't,

JOHN G. PRATT,
United States Ind. Agent.

To Thomas Murphy, Esqr., supt. Ind. aff'rs, Atchison, Kansas.

DEPARTMENT INTERIOR,
OFFICE INDIAN AFFAIRS, *October* 14, 1867.

Hon. O. H. Browning, Secretary Interior.

SIR: Referring to my communication of the 3d ultimo, stating the approximate amount of money required from the Missouri River Railroad Company in payment for the lands to be sold to said company under the Delaware treaty of July 4th, 1866, I now have the honor to report as follows, viz:

The whole area of the Delaware diminished reservation
484 amounts to one hundred thousand and ninety-two acres and forty-one hundredths of an acre (100,092.41).

The lands to be reserved from sale are as follows, viz;

For those who, under the treaty, have elected to become citizens of the United States.....acres...		5,655.45
For children of the above class.....do.....		398.23
For lands selected to satisfy the Connor, Teblon, and Necon Hecon floats, under the treaty of May 30, 1860 (Stat. at L., vol. 12, p. 1131), and the mission farm already patented		1,440.40
Making in all.....acres...		7,494.08
Which, deducted from the whole area of the reserves, leaves to be patented to said company or assigns 92,598.33 acres, which, at $2.50 per acre, the contract price, amounts to.....		$231,495.82½
The appraised value of the improvements on the allotted lands, according to the report of the commissioners, is		38,181.40
Amount of improvements on unallotted lands.....		4,810.00
		274,487.22½
The commissioners report that the log house built by the Government upon allotment No. 356, and formerly used as an agency building, is worth $200, and the company having verbally assented to pay that sum it is therefore added to the gross amount.....		200.00
		274,687.22½
The commissioners have included in their appraisement, as appears from report of Agent Pratt, the improvements upon lands selected by Edward E. Grinter, of the citizen class, from the allotment of Lucinda Marshall, No. 310, amounting to the sum of..	$92.50	
and also upon lands selected by Rosalie Swisher, of the citizen class, allotted to Katy Falleaf, No. 1003, amounting to.....	197.00	
		289.50

As the company do not get the lands upon which the improvements are made, the amount thereof should be deducted.

The commissioners recommend that the appraised value of the mill and the council house, which were upon the unallotted lands, but which were burned after the appraisal, should be deducted. Should you concur in that recommendation, the deductions to be made will be as follows, viz:

From the award to Lucinda Marshall.....	$92.50	
From the award to Katy Falleaf.....	197.00	
For value of council house.....	500.00	
For value of council mill.....	2,885.00	
		$3,674.50
which amount, if allowed, will reduce the gross amount for the lands and improvements to		270,912.72½
From the report of Agent Pratt it appears that of the foregoing 92,598.33 acres there were of abandoned allotments 4,112.07 acres, valued at.....	10,280.18	
Improvements	203.50	
Making a total of.....		10,483.68
Unallotted lands, 2,648.17, valued at.....	6,620.43	
Improvements	1,425.00	
		8,045.43
		18,529.11

485 which amount, under article 6 of the treaty, should go into the general fund of the tribe, and which, deducted from the gross amount, $274,687.22½ (provided the foregoing deductions are made), will leave the sum of $256,058.11½ to be paid in relative proportion to the Indians who have elected to remove.

The enclosed list embraces descriptions of all of the residue of the lands within the diminished reservation after making the deductions before mentioned.

The Delaware council having given notice, through the agent, that the tribe is ready to vacate the lands and remove south so soon as the money for the same shall have been paid to them, I see no reason, as at present advised, for delay in closing the business and transferring the title of the lands embraced in the list to the said railroad company or its assignees.

I return herewith the assignment by the Missouri Railroad Company to A. Caldwell (referred by you to this office on the 10th instant), to be considered in connection with the foregoing report. The following is a list of the papers transmitted herewith:

(1st.) Appraisement of improvements on unallotted lands.
(2.) Appraisement of allotted lands.
(3.) List of lands to be patented.
(4.) Notice from Delaware council.
(5.) Assignment to Caldwell.

Very respectfully, your ob'd't serv't,

C. E. MIX,
Act'g Com'r.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

A copy of a letter written by Robert H. Kern, dated St. Louis, Missouri, November 25th, 1895, addressed to the Hon. S. H. Mayes, principal chief, and the hon. national council of the Cherokee nation, together with a copy of the certification of the same by the assistant executive secretary of the Cherokee nation, which letter and certification are in possession of the Hon. Secretary of the Interior.

A copy of an act relating to a settlement by compromise of the case then pending in the courts of the United States at Washington, D. C., in which Moses Whitmire, trustee of the Cherokee freedman, is plaintiff and The Cherokee Nation and United States are defendants, a certified copy of which act is in possession of the Hon. Secretary of the Interior, signed S. H. Mayes, principal chief, dated — approved December 7th, 1895. A copy of the certification of said act by the assistant secretary of the Cherokee nation, which act forms Exhibit D in a report by W. J. McConnell of the "Cherokee compromise matter," dated January 24th, 1898, addressed to the Hon. Secretary of the Interior.

A copy of the agreement of Moses Whitmire with Robert H. Kern and J. Milton Turner, dated Washington, D. C., January 28th, 1896, signed by Robert H. Kern, J. Milton Turner, and Moses
486 Whitmire, which agreement is marked "Exhibit A 2" in report of W. J. McConnell, dated January 24th, 1898, of the "Cherokee compromise matter," addressed to the Hon. Secretary of the Interior.

A copy of an act to appropriate and pay certain moneys out of moneys arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee nation which passed the senate of said nation on March 24th, 1896, and was concurred in by the council branch of the national council March 26th, 1896, and was approved by S. H. Mayes, principal chief, on March 27th, 1896.

A receipt signed Robert H. Kern and J. Milton Turner, per Robert H. Kern, acknowledging the receipt of $126,666 from D. W. Liep, treasurer of the Cherokee nation, dated Talequah, Indian Territory, August 15th, 1896, together with a copy of the certification of said receipt by the treasurer of the Cherokee nation, which receipt forms a part of Exhibit A 2 of the report of W. J. McConnell of the "Cherokee compromise matter," dated January 24th, 1898, addressed to the Hon. Secretary of the Interior.

A copy of the statement of the Cherokee freedman strip fund, as provided by act of the national council, approved March 27th, 1896, dated Talequah, Indian Territory, December 28th, 1897, certified by

D. W. Liep, treasurer Cherokee nation, together with a letter from the said D. W. Liep, dated Talequah, Indian Territory, December 28th, 1897, addressed to the Hon. W. J. McConnell, United States Indian inspector, and Hon. George E. Ross, assistant attorney, Interior Department, Talequah, Indian Territory.

A copy of a resolution of the Cherokee council, which forms Exhibit D 2 of a report of W. J. McConnell, United States Indian inspector, of the "Cherokee compromise matter," dated January 24th, 1898.

Dated New York, December 16th, 1899.

Respectfully, WALTER S. LOGAN,
Attorney for Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *February* 6, 1900.

The honorable the Chief Justice of the Court of Claims, Washington, D. C.

SIR: In response to the order of the court in the case of The Delaware Indians *versus* The Cherokee Nation, No. 21139, requesting that said court be furnished, for use as evidence on the trial of the above-entitled cause now pending in said court, certain papers (or duly authenticated copies of the same) supposed to be on file in the Interior Department, as set forth in the motion of counsel for the plaintiffs accompanying said rule, you are advised that said order of the court and accompanying rule were referred to the Commissioner of Indian Affairs on the 13th ultimo for consideration and report.

The department is now in receipt of the report of the acting Commissioner of Indian Affairs containing certified copies of such papers as are on file in the office of the Commissioner of Indian Affairs, which, together with a copy of the report of the acting Commissioner and said rule and motion, are enclosed herewith.

Respectfully, THOS. RYAN,
Acting Secretary.

487 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *Feb.* 2, 1900.

The honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt, by department reference for report, of a communication dated January 13, 1900, from Mr. John Randolph, assistant clerk of the Court of Claims, requesting that said court be furnished with certain described papers supposed to be on file in the department, for use as evidence in the cause No. 21139, entitled "The Delaware Indians, etc., plaintiffs, *vs.* The Cherokee Nation, defendant."

I also acknowledge the receipt of department letter of January 25, 1900, transmitting the report of Indian Inspector Wm. J. McConnell, dated January 24, 1898, and accompanying papers, on the Cherokee freedmen payment, for use in answering said call of the Court of Claims.

In reply I transmit herewith copies of the following-described papers found with the inspector's report:

1. A copy of a paper purporting to be a copy of a letter written by Rob't H. Kern, dated St. Louis, Mo., November 25, 1895, addressed to S. H. Mayes, principal chief, and the national council of the Cherokee nation, together with a copy of the certification of the same by the assistant executive secretary of said nation, which paper forms a part of an exhibit accompanying the report of W. J. McConnell, U. S. Indian inspector, dated January 24, 1898, to the Secretary of the Interior.

2. A copy of a paper purporting to be a copy of an act relating to a settlement by compromise of the case then pending in the courts of the United States, at Washington, D. C., in which Moses Whitmire, trustee of the Cherokee freedmen, is plaintiff, and The Cherokee Nation and The United States are defendants, signed S. H. Mayes, principal chief, dated — approved December 7, 1895, which paper forms a part of an exhibit of said report of Inspector McConnell.

3. A copy of a paper purporting to be a copy of an agreement of Moses Whitmire with Robert H. Kern and J. Milton Turner, dated Washington, D. C., January 28, 1896, signed by Rob't H. Kern, J. Milton Turner, and Moses Whitmire, which paper is marked "Exhibit A 2" of said report of Inspector McConnell.

4. A copy of a paper purporting to be a copy of a receipt signed by Rob't H. Kern and J. Milton Turner, per Robert H. Kern, acknowledging the receipt of $126,666 from D. W. Lipe, treasurer of the Cherokee nation, dated Tahlequah, Ind. T., August 15, 1896, together with a copy of the certification of said receipt by the treasurer of the Cherokee nation, which paper forms a part of Exhibit A 2 of said report of Inspector McConnell.

5. A copy of a paper purporting to be a copy of a statement of the Cherokee freedmen strip fund, as provided by an act of the national council of the Cherokee nation, approved March 27, 1896, dated Tahlequah, Ind. T., December 28, 1897, certified to by D. W. Lipe, treasurer of said nation, together with a copy of the original of a letter from said D. W. Lipe, dated Tahlequah, Ind. T., December 28, 1897, addressed to W. J. McConnell, United States Indian inspector, and George E. Ross, assistant attorney, Interior Department, Tahlequah, Ind. T., being a part of Exhibit G 2 of said report of Inspector McConnell.

6. A copy of a paper purporting to be a copy of a resolu-
488 tion of the Cherokee council in relation to the so-called compromise between the attorneys of the Cherokee freedmen and the executive department of the Cherokee nation, and creating a joint committee to investigate the charges set forth therein, which

paper is designated as Exhibit D 2 of the said report of Inspector McConnell.

In the call of the Court of Claims is a request for "a copy of an act to appropriate and pay certain moneys out of moneys arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee nation, which passed the senate of said nation on March 24, 1896, and was concurred in by the council branch of the national council March 26, 1896, and was approved by S. H. Mayes, principal chief, on March 27, 1896." A copy of this act does not appear to be with the papers accompanying Inspector McConnell's report before mentioned, nor does there appear to be any data in the files of this office relative to the same. The only authoritative information in the possession of the office as to the text of said act is that contained in Senate Document No. 101, Fifty-fifth Congress, third session, pages 45, 46, and 47.

The communication from the assistant clerk of the Court of Claims is herewith returned, together with the report of Inspector McConnell and accompanying papers, and a copy of this report.

Very respectfully, your obedient servant,

W. A. JONES,
Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 2, 1900.

I, A. C. Tonner, acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of papers purporting to be copies of the originals as the said copies appear on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

A. C. TONNER,
Acting Commissioner.

[SEAL.]

(The following document is also known as Plaintiffs' Exhibit T.)

ST. LOUIS, MO., *November 25th*, 1895.

To the Honorable S. H. Mayes, principal chief, and the honorable the national council of the Cherokee nation:

Soon after the rendition of the decree by the United States Court of Claims, at Washington, D. C., in the case of Moses Whitmire, trustee of the Cherokee freedmen, against the Cherokee Nation, it has in various ways come to myself and associates, until now we are inclined to believe that there is a prevailing sentiment in the nation and a desire of the better-thinking element of the Cherokee people to compromise and settle the matters of dispute involved in that case. It has been represented to us that the Cherokee nation as a people, now that the right

of the freedmen of the Cherokee nation to participate in the common property of the nation has been established by the decree of the court, are disposed to accept the situation and recognize fully the rights of the freedmen as Cherokee citizens, but that on the other
489 hand there is a widespread, if not controlling, prejudice against what is known as the "Wallace roll." We also know that these questions entered into and formed some of the political issues of the late election held in the nation for members of the national council, and also for the office of principal chief. We also know that these questions have been productive of serious friction between classes of citizens of the nation—the Cherokees of Cherokee blood on the one hand, and the freedmen on the other. For your information, we beg to say that many intelligent and disinterested citizens of the nation have from time to time discussed with us these matters as well as the theories and propositions of compromise of these matters of dispute. All these things have led myself and associates, who, as counsel represent the freedmen in the case referred to, to believe that terms honorable and fair to all for a compromise and settlement of all those matters of dispute ought to be reached and probably can be. On the one hand, it is conceded, as we understand the condition of the settlement in the nation, that if the freedmen are entitled to recover at all they are entitled to receive, not the sum of $256.34 *per capita*, or rather "not to exceed" that sum, but a sum equal to the aggregate amount heretofore disbursed to each Cherokee citizen of Cherokee blood, namely, the sum of $295.35, modified, of course, in particular instances by the dates of birth and death occurring between the dates of the several payments heretofore made with Cherokees of Cherokee blood. It has been asserted and claimed that names appear on the Wallace roll to a limited number which have no right to be there, but it is also conceded that there are freedmen in the nation whose names should be upon that roll, who are entitled to participate in the distribution whose names are not there. In these circumstances we understand that it is the desire of the nation to have a new, correct, and complete roll of the freedmen made for the purpose of determining in a full and final way the names and identity of the persons who, as freedmen and free colored persons and their descendants, are entitled by virtue of the decree referred to under the ninth article of the treaty of July 19th, 1866, to participate in the distribution of the funds now being held by the United States for the purpose of this suit, and that if this revised roll can be secured it is also their desire to have the freedmen whose names may appear upon this corrected or revised roll fully equalized with the Cherokees of Cherokee blood, and it is believed that if this can be accomplished the sources or causes of friction, hostility, and animosity now existing between these classes of citizens of the nation can be wholly and effectually blotted out, and that this can be more effectually done by a compromise of these matters than by further litigation of them.

The representatives of the freedmen have fully canvassed these matters, and in view of the assurances referred to that it is the de-

sire of the Cherokee people now to treat the freedmen as Cherokee citizens, fully entitled to all the rights of Cherokee citizens, and believing it to the interest of the freedmen as much as to the other Cherokee people to adjust in a friendly way the matters of dispute and controversy between them, we have decided to submit for your consideration, and with a view to a compromise of all these matters of dispute, the following proposition, all of which, however, is subject, of course, to the approval of the Court of Claims at Washington, and conditioned upon the enactment by you of such legislation as may be necessary to carry it into effect, namely:

The application of both sides for an appeal to the Supreme
490 Court from the decision of the Court of Claims to be withdrawn; the decree now entered in the case to be so modified that the aggregate of the recovery shall be made $1,300,000, the sum to be paid to each freedman to be $295.35 in lieu of the Wallace roll; the authenticated roll of the freedmen made by the Cherokee nation, as lodged with the Secretary of the Interior, known as the authenticated roll of 1880, to be accepted and treated as final, in so far as the names upon that roll appear, as to those persons and their descendants, for the purposes of a new, corrected, and completed roll of freedmen; a commission of three to be appointed, one selected by the Cherokee nation in such manner as it may provide, another by the trustee of the Cherokee freedmen, and a third by the judge of the United States district court for the western district of Arkansas, the persons so selected to be approved by the Court of Claims, and this commission, to be organized and authorized in such manner as the Court of Claims may see fit, to proceed to an ascertainment of the names, number, and identity of the freedmen and free colored persons entitled to participate in the distribution, and when made by this commission, or a majority of it, to be certified in the manner to be prescribed by the Secretary of the Interior for the purposes of disbursements. Before this commission the Cherokee nation as such shall be entitled to a representative by counsel, and so also shall be the freedmen, and the roll as made, completed, and corrected by this commission to be treated as the official roll upon which the disbursements are to be made. The compensation of the counsel of the trustee for the freedmen to be not in excess of the amount measured by his contract with them, but this to apply to the whole amount of the recovery and of the sum so taxed, the amount to be taxed against the Cherokee nation not to be in excess of four per cent. The balance of the fund recovered in the case, after the disbursement to the freedmen whose names shall appear upon the roll as corrected, revised, and completed by this commission, the payment of all costs incurred in the case, including the compensation paid for counsel fees, to be paid over to the Cherokee nation as soon as the disbursements to the freedmen *per capita* have been made.

If a compromise of these matters in dispute can be arranged on these lines, and the Cherokee nation will, by proper enactment, authorize it to be done, and will appoint such person or persons to act for it and to sign the necessary stipulations to carry into effect,

myself and associates will present the matter to the Court of Claims at Washington and recommend in behalf of the freedmen that the decree be so modified as to meet this proposition, and will do whatever may be necessary, with the approval of the court, to carry it into effect.

Trusting these matters will receive your early consideration, and that a compromise which will effectually and forever wipe out the political friction now existing in the nation flowing from the matters in dispute referred to, and believing it to the interest of our clients to secure by an amicable arrangement rather than by force their rights in the premises, I have the honor to respectfully submit the foregoing proposition.

ROB'T H. KERN,
Att'y of Record for Moses Whitmire,
Trustee of Cherokee Freedmen.

I, Robert T. Hanks, assistant executive secretary, do hereby certify that the aforegoing ten-page document is a true and correct
491 copy of the original as appears of record in the executive department of the Cherokee nation.

Given from under my hand and the seal of the Cherokee nation on this December 11th, 1895.

[Seal of Cherokee Nation.]

ROBERT T. HANKS,
Ass't Exec. Sec'y.

An act relating to a settlement by compromise of the case now pending in the courts of the United States, at Washington, D. C., in which Moses Whitmire, trustee of the Cherokee freedmen, is plaintiff and The Cherokee Nation and The United States are defendants.

Whereas under date of November 25th, 1895, Robert H. Kern, attorney of record for Moses Whitmire, trustee of Cherokee freedmen of Cherokee nation, has transmitted to the national council a proposition for a compromise of the case of Moses Whitmire, trustee of the freedmen of the Cherokee nation, *vs.* The Cherokee Nation and The United States, now pending in the United States Court of Claims at Washington, D. C.; and

Whereas a judgment has been rendered against the defendants in favor of plaintiffs in said suit, making a certain roll, known as the Wallace roll, containing three thousand five hundred and twenty-four names, the basis of a distribution of the money adjudged due; and

Whereas in the opinion of the Cherokee nation this said roll contains the names of persons not justly entitled to share in the distribution of said money and not embraced in the terms of the treaty made and ratified between the Cherokee nation and the United States; and

Whereas it is the opinion of the freedmen of the Cherokee nation that a more just roll can be made; and

Whereas it is the desire of the said nation to recognize the right of its *bona fide citizens* freedmen, under the ninth article of the treaty of 1866, in the *per capita* disbursements heretofore made to the Cherokees of Cherokee blood, from which its freedmen have been excluded; and

Whereas applications for appeal have been filed in the Court of Claims by both plaintiff and defendant, The Cherokee Nation in said suit from the decision in said cause to the Supreme Court of the United States; and

Whereas further litigation would involve a long delay in the payment of the money decreed to be paid to the said freedmen, and would entail great expense upon the nation; and

Whereas it is the wish of the nation to equalize its freedmen with the Cherokees in the distribution of the aforesaid moneys, and it being the wish of all parties to this suit that all litigation in reference thereto should be concluded in the said Court of Claims; and

Whereas by stipulation on file in said cause it is agreed between the parties to said suit that all persons whose names appear upon a certain roll, duly authenticated by the Cherokee nation as having been made by it in 1880 and filed with the Secretary of the Interior of the United States, are admitted by the Cherokee nation to be citizens thereof, and as there can be no controversy about said persons and their descendants being citizens of the said nation at that time:

Now, therefore, for the purpose of ending all litigation in reference to the matter in controversy in said suit, and to equalize
492 the Cherokee freedmen with the Cherokees in all disbursements made by the Cherokee- to themselves, and in order to correctly ascertain the number of freedmen entitled under the ninth article of the treaty of July 19th, 1866, to share in the distribution of the money found by this decree to be due said freedmen from the Cherokee nation.

Be it enacted by the national council, That the proposition hereinbefore referred to, and hereto attached, signed by Robert H. Kern, attorney of record, for Moses Whitmire, trustee of Cherokee freedmen, is hereby, for the purpose of compromise, accepted by the Cherokee nation and is made a part of this act, and full power and authority is hereby given to our attorney, E. C. Boudinot, in said case, appointed under authority of act approved September 24th, 1895, to act on behalf of the Cherokee nation before the Court of Claims to compromise the case of Moses Whitmire, trustee of Cherokee freedmen, *vs.* The Cherokee Nation and The United States, now before the Court of Claims in Washington, D. C., in accordance with the provisions of this proposition and this act, and by and with the consent of the Court of Claims, to arrange with plaintiff and the United States for a modification of the judgment heretofore rendered in said cause and to carry out the spirit of this act, and to further arrange that said judgment shall be so modified as to strike out

the binding force of the Wallace roll and the provision therein that the number of freedmen entitled to share in the distribution of said moneys shall be ascertained by the Secretary of the Interior from the said judgment, and in lieu thereof a provision shall be inserted in said judgment that the number of freedmen entitled to share in the distribution of the money mentioned in said decree shall be ascertained by three commissioners, one to be selected by the Cherokee nation, one by Moses Whitmire, trustee of the freedmen of the Cherokee nation, and one by the judge of the district court of the United States for the western district of Arkansas, and that these three commissioners shall be confirmed by the Court of Claims; that they shall be empowered by the court to ascertain the number of freedmen entitled to share in the distribution aforesaid; that a vote of a majority of said commissioners shall establish the identity of the freedmen entitled to share in the distribution of said money, and that in ascertaining the identity of freedmen so entitled either party shall be allowed by said commissioners to be represented by counsel learned in the law; that this commission shall accept the names of the persons which appear upon the aforesaid authenticated roll of 1880, furnished as aforesaid by the Cherokee nation to the Secretary of the Interior, and their descendants now living in the Cherokee nation, as conclusive evidence of the right and identity of said persons to share in the distribution of said money; that in ascertaining the number and identity of the freedmen so entitled these commissioners shall ascertain who of said freedmen were alive at the dates of disbursements complained of in the amended petition in said cause by the Cherokees to the exclusion of the freedmen, to wit, in the years 1886, 1891, and 1894; that the said commissioners shall proceed to the Cherokee nation, and there, after due notice given, hear evidence, pro and con, as to the identity of all other persons than those mentioned in the aforesaid authenticated roll of 1880 and their descendants residing in the Cherokee nation in ascertaining the number of said people who are entitled to share in the distribution of the moneys disbursed at the three last above-named dates. When this commission shall have ascertained,
493 either by a unanimous or majority vote of said commissioners, the names and number of said freedmen entitled to share in the distribution of the moneys found in favor of the plaintiff in this decree, they shall report the same to the Secretary of the Interior, specifically stating the names and number of said freedmen entitled to share in the distribution of moneys on each of the respective dates last above named; that the amount of money for which judgment shall be rendered in said cause in favor of plaintiff, and against the Cherokee nation, shall be the sum of one million three hundred thousand dollars ($1,300,000.00), with the provision that any surplus left, after distributing said money in accordance with the terms of this decree, shall become due and payable at once to the Cherokee nation, in accordance with the terms provided for in the agreement between the said nation and the Secretary of the Interior, referred to in said decree; that the Secretary of the Interior

shall proceed to disburse so much of the amount last named, less the expense with which said judgment is encumbered by the terms of this decree, to the persons so reported to him by said commissioners, or a majority of them, and shall make a just distribution of the same among said parties, but shall not pay to any one of said parties in excess of the sum of $295.35. The said attorney is authorized to consent that judgment may be entered in favor of plaintiff's attorney of record in said cause, in the sum of ten per cent. of the amount found in said judgment in favor of the plaintiff against the Cherokee nation, and to agree that four per cent. thereof shall be charged against the Cherokee nation, and paid out of the fund held by the Secretary of the Interior by virtue of the agreement between the Cherokee nation and the Secretary of the Interior referred to in this decree. The said attorney is further empowered and authorized by this act to do anything further that may be necessary to carry out the terms and spirit of this act, and agree that when this judgment shall be modified in accordance with the terms and spirit of this act no appeal, notice of appeal, or motion for a new trial or rehearing shall be taken by the Cherokee nation, or any other party to this suit, from the terms of the decree so modified; and the Cherokee nation shall be bound by any agreement made in accordance with this act. The attorney is further instructed to consent that the compensation of $1,500.00 shall be paid to each commissioner confirmed by the court as aforesaid, and that a further sum of $2,000 shall be allowed by said court as expenses of said commissioners in ascertaining the number of freedmen aforesaid, and that said sum shall be charged and paid, one-half by the Cherokee nation out of its funds held by the Secretary of the Interior aforesaid, and one-half shall be charged to and paid out of the moneys herein allowed in favor of the plaintiff, and that sum shall be paid upon presentation of proper certificate of expenditure, certified by said commissioners, by the Secretary of the Interior, and that the salaries of said commissioners shall be paid when they shall have completed their work and reported the names and numbers ascertained as aforesaid to the Secretary of the Interior; that said commissioners shall complete their labors within six months from the day of their confirmation as such commissioners by the Court of Claims; that all other provisions of said decree shall remain as they now are.

494 *Be it further enacted*, That the principal chief be, and he is hereby, authorized to appoint the commissioner herein provided for on part of the Cherokee nation whenever it shall become necessary, who shall be a Cherokee by blood, and a citizen; that our attorney, E. C. Boudinot, shall report to the principal chief as soon as the arrangements hereinbefore provided shall have been made and a compromise in accordance with the provisions of this act shall have been allowed and approved by the Court of Claims.

Be it further enacted, That our attorney, E. C. Boudinot, is hereby instructed to represent the Cherokee nation before the commissioners hereinbefore provided, and to defend the interests of the Cherokee nation before said commissioners at no further expenses to the

Cherokee nation than included in the fee already paid him in said case.

Provided, That the principal chief is hereby authorized to pay to the said E. C. Boudinot his necessary expenses while in actual service before said commission and in attending to the business of the nation in the said case by warrant, and an appropriation is hereby made for that purpose.

Approved, Dec. 7th, 1895.

S. H. MAYES,
Principal Chief, N. N.

I, Robert T. Hanks, assistant executive secretary, do hereby certify that the above and aforegoing ten-page document is a true and correct copy of the original as appears of record in the executive department of the Cherokee nation.

Given from under my hand and the seal of the Cherokee nation on this the 11th day of December, 1895.

[Seal of Cherokee Nation.]

ROBERT T. HANKS,
Ass't Exec. Sec'y.

(The following document is also known as Plaintiffs' Exhibit V.)

WASHINGTON, D. C., *January 28th*, 1896.

This agreement made and entered into the day and year above written between Moses Whitmire, trustee of the freedmen of the Cherokee nation, and Robert H. Kern and J. Milton Turner, of the city of Saint Louis, State of Missouri, witnesseth, to wit:

The said Moses Whitmire, acting as said trustee for said freedmen, hereby contracts and agrees to give said Robert H. Kern a sum of money equal to one-third of $400,000 for his services in having the said sum appropriated by the Cherokee national council or the Congress of the United States to equalize said freedmen with the Cherokee Indians in the three several payments of money to themselves mentioned in the suit of Whitmire, trustee, &c., *vs.* The Cherokee Nation *et al.*, now pending in the United States Court of Claims, at Washington, D. C., and the said Kern hereby accepts the said contract of employment and agrees to have said money appropriated as herein provided, and that if the same be not appropriated, then no charge shall be made under this agreement. It is expressly understood that the sum of money herein contracted to be paid said Robert H. Kern shall be paid by the officer of the law authorized to disburse said $400,000 out of the said sum of $400,000 under the act appropriating the same.

495 In witness whereof we have hereunto set our hands and seals the day and year above written.

ROBERT H. KERN.
J. MILTON TURNER.
MOSES (his x mark) WHITMIRE.

Witness to signature of Moses Whitmire, trustee, etc.:
MARIA L. RICHARDSON,
1416 *I St. N. W.*

Personally appeared before the undersigned, a notary public, the aforesaid Moses Whitmire, who, being duly sworn, makes oath and says that he executed the aforesaid instrument as trustee of the freedmen of the Cherokee nation, on the 28th day of January, 1896, for purpose herein mentioned.

MOSES (his x mark) WHITMIRE,
Trustee for Cherokee Freedmen.

Witness the signature of Moses Whitmire:

A. C. CUNNINGHAM.
C. L. HARNAGE.

Subscribed and sworn to before me this 13th day of Aug., 1896.

E. B. BENDER,
Notary Public.

TREASURY DEPARTMENT,
CHEROKEE NATION, IND. TER.,
TAHLEQUAH, I. T., *Aug. 15th*, 1896.

Received of D. W. Lipe, treasurer of the Cherokee nation, as provided by an act of the national council approved March 27th, 1896, and entitled "An act to appropriate and pay certain monies arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee nation," the sum of one hundred and twenty-six thousand six hundred and sixty-six dollars, in full of all demands against the Cherokee nation, as per act above referred to and contract hereto attached.

ROBERT H. KERN,
Attorney of Record in Case Moses Whitmire, Trustee of Cherokee Freedmen, vs. Cherokee Nation et al., in Court of Claims of United States.

J. MILTON TURNER,
Per ROBERT H. KERN.

I hereby certify that the foregoing two pages of typewritten matter is a true copy of the contract made between Moses Whitmire, trustee, etc., for the Cherokee freedmen, and Robert H. Kern and J. Milton Turner, attorneys for the Cherokee freedmen before the Court of Claims at Washington, D. C., and also receipt for $126,666.00.

D. W. LIPE,
Treasurer Cherokee Nation,
Per ROB'T B. ROSS, *Sec'ty.*

Tahlequah, I. T., December 30th, 1897.

496 The following document is also known as Plaintiffs' Exhibit Z.

[D. W. Lipe, treasurer. Rob't B. Ross, sec'y of treasurer.]

TREASURY DEPARTMENT,
CHEROKEE NATION, IND. TER.,
TAHLEQUAH, I. T., *Dec. 28th*, 1897.

Statement of Cherokee Freedmen Strip Fund, as Provided by Act of the National Council Approved March 27th, 1896.

1896.			
Aug. 12.	To amount rec'd from Sec. of Int.		$380,000.00
Aug. 15.	By am't p'd Rob't H. Kern, att'y fees, 3 checks of $42,222.00 ea	$126,666.00	
1897.			
July and Aug.	By p'd freedmen, per pay rolls	236,215.20	
" " "	" general expenses in attending payment	9,346.80	
Sept. 30th.	" am't to bal. unclaimed shares	7,772.00	
		380,000.00	380,000.00
" "	To bal. on hand, unclaimed shares	7,772.00	

NOTE.—Division of—

1896, Aug. 12.	Am't bal. outlet fund rec'd		481,779.86
	" to Freedmen act, M'ch 27th, 1896	$380,000.00	
	" " Delawares, M'ch 30th, 1896	41,857.11	
	" " Shawnees, " " "	59,922.75	
		481,779.86	481,779.86

I hereby certify that the above is a correct statement, as stated. Given under my hand the day and date first above written.

D. W. LIPE,
Treasurer Cherokee Nation,
Per ROB'T B. ROSS, *Sec't'y*.

TREASURY DEPARTMENT,
CHEROKEE NATION, IND. TER.,
TAHLEQUAH, *Dec.* 28, 1897.

Hon. W. J. McConnell, U. S. Indian inspector, and Hon. Geo. E. Ross, assistant attorney, interior department, Tahlequah, I. T.

SIRS: Find enclosed statement of freedmen strip fund, per act of the national council of date March 27, 1896, as per your request of the 27th inst.

Very respectfully,

D. W. LIPE, *Treas. C. N.*,
P'r ROB'T B. ROSS, *Sec't'y*.

(The following document is also known as Plaintiffs' Exhibit A. A.)

Whereas it is currently reported and generally believed that the so-called compromise between the attorneys of the Cherokee freedmen and the executive department of the Cherokee nation and the subsequent approval of the same by the national council was the result of a conspiracy between the attorneys of said freedmen and the representatives of the Cherokee nation to rob the treasury of

$400,000 and to fix upon the Cherokee people a population of more than one thousand useless and degraded negroes to share their lands; and

Whereas it proclaimed throughout the length and breadth
497 of the land that the officials of the nation shared in the spoils wrung from the people by fraud and open corruption, and that the charges unchallenged are used against us by our enemies for the destruction of our government and the utter ruin of our people; and

Whereas one hundred and twenty-six thousand dollars of the $400,000 withdrawn from the Cherokee nation for other purposes than the payment to the freedmen, as contemplated by the act of the national council ratifying said agreement; and

Whereas the good name of the national council is thereby brought to shame and the officials of the Cherokee nation are branded as corruptionists and bribe takers and unfit to manage the trust in their hands:

Therefore be it resolved by the national council, That there be, and is hereby, created a joint committee of three members from the senate and four members from the council to investigate the charges set forth in the preamble of this resolution and to report their findings to the national council during the present session of the national council, and to the end that a full and complete investigation may be had; and they are authorized to send for persons and papers, and to administer oaths, and to punish for contempt and such other acts as may be necessary to the full performance of the duties herein imposed.

Motion for a Rule upon the Honorable Secretary of the Interior.

Now come the petitioners, The Delaware Indians, residing in the Cherokee nation, *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable Secretary of the Interior, requiring him to transmit to said court, to be used in the above case, copies of the following documents in said department, to wit:

I. A copy of a report, dated April 7, 1869, from N. G. Taylor, Commissioner, to Hon. J. D. Cox, Secretary of the Interior, recorded in the Indian Office in the Report Book No. 18, at page 271.

II. A copy of a letter marked "Del. H. 515," dated "Lawrence, Kansas, 6/22/1871," and signed "Enoch Hoag, supt.," and addressed to Hon. E. S. Parker, Commissioner.

III. A copy of a letter marked "Del. H. 515," dated "Quapaw special agency, Ind. Ter., June 1, 1871," signed "Geo. Mitchell, U. S. special agent," and addressed to Enoch Hoag, supt. Ind. aff'rs.

IV. A copy of a letter marked "Del. I. 664," dated "Washington, D. C., July 31, 1871," signed "C. Delano, Sec.," and addressed to "Friend Enoch Hoag, supt. Ind. aff'rs, Lawrence, Kansas."

Dated New York, March 19, 1901.

WALTER S. LOGAN,
Attorney for Plaintiffs.

Reply of Interior Department.

DEPARTMENT OF THE INTERIOR, F,
WASHINGTON, *April* 2, 1901.

Clerk of the Court of Claims.

SIR: Inclosed herewith you will find a copy of a communication from the Commissioner of Indian Affairs, dated March 30, 1901, transmitting certified copies of papers called for by the court
498 on March 23, 1901, in the case of The Delaware Indians *v.* The United States, 21139. The rule of the court is also inclosed herewith.

Respectfully,

THOS. RYAN,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *March* 30, 1901.

The honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt of department letter of March 26, 1901, enclosing for consideration, immediate report, and recommendation a communication from the Court of Claims requesting to be furnished for use as evidence in the suit of The Delaware Indians *et al. v.* The Cherokee Nation certain papers or copies thereof, as stated in the accompanying:

1. Copy of a report, dated April 7, 1869, from N. G. Taylor, Commissioner, to Hon. J. D. Cox, Secretary of the Interior, recorded in the Indian Office, in the Report Book No. 18, at page 271.

2. A copy of a letter marked "Del. H. 515," dated "Lawrence, Kansas, 6/22/1871," and signed "Enoch Hoag, supt.," and addressed to Hon. E. S. Parker, Commissioner.

3. A copy of a letter marked "Del. H. 515," dated "Quapaw special agency, Ind. Ter., June 1, 1871," signed "Geo. Mitchell, U. S. special agent," and addressed to Enoch Hoag, supt. Ind. aff'rs.

4. A copy of a letter marked "Del. I. 664," dated "Washington, D. C., July 31, 1871," signed "C. Delano, Sec.," and addressed to "Friend Enoch Hoag, supt. Ind. aff'rs, Lawrence, Kansas."

Certified copies of the above-mentioned papers are transmitted herewith, together with the communication from the Court of Claims, and it is respectfully recommended that they be transmitted to the said court.

Very respectfully, your obedient servant,

W. A. JONES,
Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *March* 30, 1901.

I, W. A. Jones, Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear of record and on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

W. A. JONES,
Commissioner.

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DEPARTMENT INTERIOR,
OFFICE INDIAN AFFAIRS, *April* 7, 1869.

Hon. J. D. Cox, Secretary Interior.

SIR: I have the honor to transmit herewith a letter from Lewis Downing, principal chief of the Cherokee nation, and H. D. Reese, chairman of the Cherokee delegation, dated the 27th ult., relative to a certain agreement between said nation and the Delaware tribe of Indians, and requesting that the Delaware bonds and funds, provided to be transferred by said agreement, be so transferred to the credit of the Cherokees as early as possible.

The agreement (copy herewith) referred to by Messrs. Downing and Reese was duly approved by the President on the 11th of April, 1867. It provides that the Delawares may select a quantity of land east of the line of the 96° west longitude, Cherokee nation, in the aggregate equal to 160 acres for each individual of the Delaware tribe who has been enrolled upon a certain register made by the said agent for said tribe, together with such other members of the tribe whose names may be added thereto within one month after the signing of the agreement, for which land the Cherokees are to be paid from the Delaware funds, now held by the United States, a sum equal to one dollar per acre, and to enable this payment to be made the Secretary of the Interior is authorized by the agreement to transfer to the Cherokee nation the necessary amount of United States bonds, held in trust for the Delawares, at their market value at the time of the transfer.

It is also agreed that the Delawares shall pay from their funds, in the possession of the United States, a sum of money which shall bear the same proportion to the Cherokee national fund that the number of Delawares who remove to the Indian country bears to the whole number of Cherokees residing in the Cherokee nation, fixing as a basis, on the part of the Cherokees, the amount of said Cherokee national fund at $1,678,000.

From papers and documents on file in this office it appears there were nine hundred and eighty-five of the Delawares who elected to remove. Allowing for each of these individuals one hundred and sixty acres of land, at a cost of one dollar per acre, and the amount

to be paid to the Cherokees by the terms of said agreement, for the land sold to the Delawares, will be $157,600.

By the census of the Cherokees, taken in 1867, there were 13,566 souls in that nation. Taking this number, the number of Delawares who elected to remove, and the amount of the Cherokee national fund as a basis of calculation, and the amount the Delawares would have to pay, to make their share of the national funds equal the amount of the Cherokees in proportion to the number of individuals in each tribe, is $121,834.65.

The stocks held in trust by the Government for the Delawares, as a "general fund," are as follows, viz:

State of Florida, at 7 per cent	$59,000.00
State of Georgia, at 6 per cent	2,000.00
State of Louisiana, at 6 per cent	4,000.00
State of Missouri, at 6 per cent	10,000.00
State of North Carolina, at 6 per cent	121,000.00
State of South Carolina, at 6 per cent	1,000.00
United States loan of 1862, at 6 per cent	210,300.00
500 United States issue to Union Pacific railway (E. D.), at 6 per cent	280,000.00
United States 5-20's 1867, at 6 per cent	26,400.00
Total	713,700.00

The Delawares who elected to remove, or most of them, have been in the Cherokee country about one year, occupying the lands which, by the terms of said agreement, were purchased from the Cherokees, and the latter are, consequently, desirous of having the matter concluded and finally disposed of, by the Delawares either paying the amount due from them or having a sufficient amount of their stocks placed to the credit of the Cherokee nation.

The matter is respectfully submitted for your consideration, and for such action in the premises as may be deemed necessary and advisable.

Your attention, in connection with this subject, is respectfully invited to office report of the 9th of February last, relative to a division of the Delaware funds.

Very respectfully, your ob'd't serv't,

N. G. TAYLOR, *Com'r.*

OFFICE SUPT. INDIAN AFFAIRS,
LAWRENCE, KANSAS, 6, 22, 1871.

Hon. E. S. Parker, Commissioner:

Referring to department letter 4, 17, directing this office to ask the Delawares resident upon Peoria lands to remove to the Cherokee reservation, I enclose herewith letter of Special Agent Mitchell (1st inst.) reciting their wrongs. Their understanding of the treaty, and calling the attention of the Government to the 14th article of the same,

asking what action had been had thereon. That their number on said Peoria lands is 330 and will probably be increased to 500, that they have arranged for purchase from the Peorias, and rather than return they will relinquish to the Cherokees the funds paid to that nation under the treaty. I enclose also their agreement. This office has uniformly urged the Delawares to *unity, harmony,* and *industry;* that they do not scatter. Having found so many of them located on the Neosho, I have deemed it best to encourage industrial labor and that their children be in school. This has been regarded as temporary.

Respectfully, ENOCH HOAG, *Supt*

QUAPAW SPECIAL AGENCY,
IND. TER., *June* 1, 1871.

Enoch Hoag, supt. Ind. aff'rs.

SIR: Your letter of the 29th ult., transmitting letter of acting Commissioner H. R. Crum in reference to certain Delaware Indians now stopping within this agency on the lands of the Confederate Peorias, etc., has been received.

In reply, I have to say that I have taken every opportunity to make these Delawares understand their true position and what was expected of them by the Government. They fully understand the whole subject, so far as the wishes of the Government are concerned. They claim that they were deceived by their headmen as to what their status would be in the Indian country. They say they
501 were led to believe that a tract of land would be set apart for their use in the Cherokee country. See article IV, Delaware treaty of 1866. (Just here I would say that my attention has been called by the Delawares to the XIV article of the same treaty, asking what action had been taken by the Government in reference to the fulfilling of the same, particularly the last clause of said article.) When they arrived in the country of the Cherokees they found that every place where they attempted to settle some Cherokee was found who pretended to own the claim and demanded pay for it. In one case a Cherokee man pretended to own five different claims and did actually sell them to the Delaware Indians.

James Simons, the head man of those who have come out of the Cherokee country, told me that he had paid three hundred dollars for a claim to one man, and he was afterwards driven off by other parties, several pistol shots being fired into the house, and this at a time when he could not see from the effects of sore eyes. This speculative trait of character manifested on the part of the Cherokees towards the Delawares is true, also, as to the Osages and Shawnees. The Delawares complain of the Cherokees introducing whiskey into their camps, more particularly at times when their money was being paid them; some of their people have been killed, others wounded. They also complain of partiality being shown by the Cherokee officers towards Cherokee offenders; finally, they say that they will never go back; rather than do so, they are willing to lose what has been paid the Cherokees.

The Delawares now within this agency number three hundred and thirty persons and are fully organized with chief and council. The chief says when all come out of the Cherokee country that intend doing so his band will number five hundred.

An agreement has been made with the Peorias, etc., for the purchase of the land that they bought of the Quapaw Indians, subject to the approval of the Government, a copy of which I enclose. These Delawares seem well pleased with their present location and are making considerable improvements. Their planting is mostly done for this season. It would be wrong to disturb them at this time.

Hoping that the department will cause a full investigation of the affairs of these Indians before resorting to compulsory measures,

I beg to remain your most ob't serv't,

GEO. MITCHELL,
U. S. Special Ag't.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *July 31st*, 1871.

SIR: Enclosed I transmit copy of a communication from the acting Commissioner of Indian Affairs dated the 28th inst., relative to certain Delaware Indians who appear to have withdrawn from the Cherokee nation and settled upon lands belonging to the Kaskaskias.

From the papers forwarded with your letter of the 22d inst., it seems that the representatives of the Delawares have entered into an agreement with the Kaskaskias, subject to the approval of the Government, to purchase a portion of their lands and permanently reside thereon; they further recite, through Agent Mitchell, certain wrongs alleged to have been practiced upon them by Cherokees as sufficient ground for separation from the tribe in the Cherokee country.

502 I have carefully considered the subject, and, in view of the fact that grave objections exist to my assenting to the arrangements proposed, now refer the subject to you for a report after the difficulties of the case have been considered on your part.

When the contracts of April 8th, 1867, between the Delawares and Cherokees was approved by the Government, it was with the distinct understanding that *all* the Delawares, except those electing to become citizens, were to remove and become part and parcel of the Cherokee nation, and certainly there is now no authority by which the department can permit a portion of the Delawares to withdraw at will beyond the operation of the laws of the Cherokee nation, under which, through their representatives, they voluntarily placed themselves.

Again, on the other hand, I am not aware that the Executive possesses the power to allow the Kaskaskias to dispose of their lands in the manner contemplated without the sanction of Congress, and, as it is the well-known policy of the Government to discourage roving

habits in the Indians, I feel that it would be extremely difficult in all such cases to gain the necessary permission from Congress for the Kaskaskias to alienate their lands to a band of Indians who, either from real or imaginary wrongs, had wandered from their proper homes, nor would it be the less difficult, in the face of the provision of art. X, Delaware treaty, July 4, 1866, to obtain from that body authority to divert, in payment for these lands, a portion of the funds now to the credit of the Delawares as a whole.

But, aside from these considerations, there is another which very forcibly impresses my mind, and it is to this that I wish particularly to direct your attention; it is the effect such a precedent might exert upon other Indian tribes similarly situated as the Delawares.

Before long the Government, it is presumed, will ratify an agreement between the Shawnees and Cherokees by which the Shawnees become merged into the Cherokee nation and assume a *fixed* location in the Cherokee country. Should the course of the Delawares be countenanced by the Government, I am apprehensive the example would exert an injurious influence upon the Shawnees, and possibly introduce discontent among the Osages, in fact, eventually lead to the division of tribes into fragments and threaten with destruction the wise and well-defined policy of the Government to concentrate all the members of each tribe and permanently locate them in the country best adapted to their wants.

As before remarked, I lay these objections to granting the request of the Delawares before you in order after full reflection you may be able to advise the department as to the best course to be pursued under the circumstances. When you shall have made your report the case will be submitted to the members of the Indian peace commission for an expression of their views, after which you will receive the necessary instructions as to your duty in the premises. For the present, the order of the Commissioner of Indian Affairs suspending the payment of funds due the Delawares will remain in force.

I am, sir, very respectfully, your ob't serv't,

C. DELANO, *Secretary.*

Friend Enoch Hoag, supt. Ind. affairs, Lawrence, Kansas.

503 *Motion for a Rule upon the Honorable Clerk of the United States Senate.*

Now come the petitioners, The Delaware Indians residing in the Cherokee nation *et al.*, by Walter S. Logan, their attorney, and move the court for a rule upon the honorable clerk of the United States Senate, requesting him to transmit to said court, to be used in the above case, a copy of the following document, namely:

A certain letter, dated Washington, D. C., March 18, 1890, addressed to the Committee on Indian Affairs, signed by J. B. Mays, principal chief of Cherokee nation, and the Cherokee delegates, John L. Adair and D. W. Bushyhead. This letter appears on pages 162,

163, and 164 of Senate Executive Document No. 18, Fifty-second Congress, second session. It occupies the last five lines of page 162, all of page 163, and the first fifteen lines of page 164 of said document.

August 4, 1899.

WALTER S. LOGAN,
Attorney for Pl'ffs, 27 William St.,
New York City.

WASHINGTON, D. C., *March 18th*, 1890.

The Committee on Indian Affairs:

The Delawares, resident in the Cherokee nation, Indian Territory, have a trust fund in the hands of the Government amounting to over eight hundred thousand dollars, the interest of which is paid to them semiannually.

They have at different times applied for the distribution of this fund. A renewed application is now made through their legally authorized representative, Charles Journeycake. This measure has practically received the unanimous approval of the Delawares who are *bona fide* citizens of the Cherokee nation. The 15th article of the treaty of 1866 between the United States and the Cherokee nation provides as follows: "The United States may settle any civilized Indians friendly with the Cherokees and adjacent tribes within the Cherokee country on unoccupied lands east of the 96° on such terms as may be agreed upon by any such tribe and the Cherokee, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees, they shall be incorporated into and forever remain a part of the Cherokee nation on equal terms in all respects with native citizens."

On the 8th day of April, 1867, articles of agreement were entered into between legal representatives of the Cherokee nation and the Delaware tribe of Indians in accordance with the 15th article of the said treaty above quoted. Under the terms of this agreement the Delaware tribe of Indians agree to pay the Cherokee nation "a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares, registered as above mentioned and removing to the Indian country, sustains to the whole number of Cherokees residing in the Cherokee nation."

504 The said agreement concludes as follows:

"On the fulfillment by the Delawares of the foregoing stipulations all the numbers of the tribe registered as above provided shall become members of the Cherokee nation, with the same rights and immunities and the same participation (and no other) in the na-

tional fund, as native Cherokees, save as hereinbefore provided. And the children hereafter born of such Delawares so incorporated into the Cherokee nation shall in all respects be regarded as native Cherokees."

The Delawares on their part have complied with all the conditions of this said agreement. They removed to the Cherokee nation in the year 1867, where they have since lived, and as stated are to "ever after remain a part of the Cherokee nation."

The status of the Delawares as citizens of the Cherokee nation is thus clearly defined.

As the legal representative of the Cherokee nation, we have been officially authorized and instructed by an act of our legislature to assist our Delaware brethren in their efforts to obtain a full and complete settlement with the Government, and we cheerfully comply with our instructions, fully convinced that the interests of the Delawares will be subserved by the distribution to them of the said fund.

We offer below some of our reasons in support of these views:

The Delawares are a stock raising and agricultural people, subsisting mainly as such. They have arrived at a state of civilization where an annuity is no longer necessary for their prosperity, and in our opinion are fully competent to dispose of their own money to the best advantage. Favorable opportunities for investment are everywhere present. The rapid improvement of our country makes it plainly apparent that all choice bodies of land will soon be occupied, and those of our citizens are fortunate who will have the means to locate and improve these lands before they are all taken up. Stock raising is there an established and lucrative business and is a splendid field for investment. Money can then be loaned on unquestioned security at double the interest the Delawares are now receiving from the Government. While the Delawares are scattered over a country seventy-five or eighty miles in length, the stated annuity that they are paid has in some respects a tendency to keep them a separate and distinct people, not in the interests of harmony and good feeling. We also believe that stated annuities have a tendency to encourage indolence and not self-reliance.

An ample school fund secures to our people all alike the blessings and advantages of education. The Cherokee nation has also a liberal and permanent fund for judicial and executive purposes, and no probable reason exists for the diminution of these funds. During the last Congress a distinguished member of that body opposed the proposed measure which was then being considered upon the grounds that the Delawares would spend their money and then become dependent upon the United States Treasury, clearly showing a misapprehension upon the subject, as they could never become so dependent unless the Cherokee nation should alike become dependent. Nor can the withdrawal of this fund from the hands of the Government in any way affect the pecuniary interests of the Cherokee nation, as the money asked for is owned solely by the Delawares,

a surplus of their original tribal interests remaining to them after they had purchased equal rights in the Cherokee nation.

505 Knowing the Delawares as we do, being personally acquainted with them, we feel fully justified in submitting the foregoing statement.

Very respectfully,

J. B. MAYS,
Principal Chief Cherokee Nation.
JOHN L. ADAIR,
D. W. BUSHYHEAD,
Cherokee Delegates.

I, Wm. R. Cox, secretary of the U. S. Senate, do hereby certify that the foregoing is a full and true copy of a certain letter dated Washington, D. C., March 18, 1890, addressed to the Committee on Indian Affairs, signed by J. B. Mays, purporting to be principal chief of Cherokee nation, and the Cherokee delegates, John L. Adair and D. W. Bushyhead, now on the files of this office.

[SEAL.] WM. R. COX, *Secretary.*

Attest:
Aug. 16th, 1899.

IV. DEFENDANT'S EVIDENCE.

Deposition of J. A. Scales, for Defendant, Taken at Webbers Falls, Ind. T., on the 21st Day of February, A. D. 1901.

Claimants' counsel, Kenneth S. Murchison; defendant's counsel, William T. Hutchings.

Examination by Mr. HUTCHINGS:

Question. What is your name?

Answer. J. A. Scales.

Question. State your age and residence.

Answer. I am 69 next June, and live near Webbers Falls, Cherokee nation.

Question. What is your citizenship?

Answer. A Cherokee by blood.

Question. How long have you resided in the Cherokee nation?

Answer. Well, I have been here since 1834.

Question. What offices or positions of trust have you held at any time under the Cherokee nation?

Answer. Well, I was an officeholder for 40 years. I believe I held all the offices I was eligible to except principal chief.

Question. What office under the judiciary?

Answer. Well, I was chief justice of the supreme court two terms.

Question. About how old were you when what was known as the Cherokee-Delaware agreement was made?

Answer. About 35.

Question. State what was the construction put on that agreement,

if you know, by the Cherokee people, and what information was given them, if any, in regard to the same by the parties who entered into that agreement on behalf of the Cherokee nation.

(The question is objected to as incompetent and as hearsay.)

Answer. Well, my impression is that they believed that the old Delawares were entitled to the 160 acres of land and that the young ones had all the rights of the native-born Cherokees.

506 Question. Was it the understanding that the children born of registered Delawares, after they came to the Cherokee nation and after the agreement was made, were to have any rights in excess of those that belonged to and pertained to native Cherokees?

Answer. No.

Question. Were you acquainted with William P. Ross?

Answer. Yes, sir; I was.

Question. If you ever had any conversation with William P. Ross, or heard him make any statement with reference to the rights that either the registered Delawares or their descendants had after the making of the agreement acquired by that agreement, state what it was.

(Objected to as incompetent, irrelevant, and immaterial.)

Answer. I don't remember that I ever did. I know I have heard him talk about it. I know after they entered that suit that was pending when the treaty was made that he seemed to think that they didn't have any right to the proceeds of the land as they had objected to the lands being valued when the Cherokee interest was assessed in making the treaty.

Question. What do you mean by the lands being assessed; what was that done for?

Answer. There was a value put on the land to ascertain the amount of property that the Cherokees had invested.

Question. Why did they want to know what the investments of the Cherokees was?

Answer. In order to ascertain their *pro rata* that they were to pay in. They contended at that time that the land didn't belong to the Cherokee; that we had already ceded it to the United States under the treaty of '66.

Question. Then, it was a fact, was it or not, that when the payment was made by Delaware *per capita* in order to equalize them with the Cherokees that the lands west of 96, then owned by the Cherokees, was not taken into consideration.

Answer. No.

Question. When these lands were afterwards sold to the Government by the Cherokees and the proceeds distributed to Delawares and Cherokees alike, what, if you remember, was the *pro rata* share received by each member of the families?

Answer. It was $265.

Counsel for complainants waive cross-examination.

J. A. SCALES.

UNITED STATES OF AMERICA, }
Indian Territory, Northern District. }

I, Clara Mitchel Wood, a notary public within and for the northern district of Indian Territory, certify that at the time and place aforesaid J. A. Scales, a witness on behalf of the defendant in the above-entitled cause, was sworn by me before any question was put to him, to tell the truth, the whole truth, and nothing but the truth, relative to said cause, and that his answers were taken down by me, and that his deposition as aforesaid was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and affixed my seal this 21st day of February, 1901.

[SEAL.] CLARA MITCHEL WOOD,
Notary Public.

507 *Deposition of Robert B. Ross, for Defendants, Taken at Parkhill, Ind. T., on the 22d Day of February, A. D.* 1901.

Claimants' counsel, Kenneth S. Murchison; defendants' counsel, William T. Hutchings.

ROBERT B. ROSS, having been first duly sworn, deposes as follows:

Question. State your age and residence.

Answer. My age is 55, my last birthday; my residence Parkhill, Cherokee nation.

Question. What is your citizenship?

Answer. My citizenship is Cherokee.

Question. What relation are you to the John Ross who was for so long time chief of the Cherokees?

Answer. Grandson.

Question. What relation are you to William P. Ross?

Answer. He is a second cousin of mine.

Question. Were you well acquainted with William P. Ross?

Answer. Yes, sir.

Question. How long has he been dead?

Answer. It was in '91 he died; about ten years ago.

Question. Were you associated with him much, William P. Ross, about the time of the making of the Delaware-Cherokee agreement and during the years thereafter?

Answer. Yes, sir; we were associated together ever since the war.

Question. Did you ever hear him discuss that agreement and what he intended?

Answer. More particular after—there was a dispute got up as to the matters of the adopted citizens that participated in the payments here—that question came up.

(Counsel for the complainant- objects to the answer of the witness as not responsive to the question.)

Question. What statements at any time did you ever hear him make about the rights which were intended to be given and were given to the Delawares in that agreement?

(Counsel for complainants objects to the question as irrelevant, immaterial, and incompetent.)

Answer. I heard him speak on several occasions with reference to that, both publicly and privately; that is, the views on that point were to the effect that the Delawares were entitled to citizenship here; that is, the registered Delawares were entitled to the 160 acres as long as they were living here; that if there should happen to be a division made while the original Delawares were living that they would be entitled to the 160 acres; otherwise if they died it all went back to the nation—the property—just like the native Cherokee.

Question. Well, what was to be the status of the personal property of these registered Delawares?

Answer. They were to be citizens and to enjoy all the rights and privileges of native Cherokees.

Question. Were they to get any more or any less?

Answer. No, sir; they were to get no more than the native Cherokees.

Question. Has there ever been since that agreement was made any discrimination against the Delawares as to the political rights in any way?

508 Answer. There was some discrimination in reference to using the money——

Question. Political rights, I mean?

Answer. No, sir.

Question. Have they not voted for members of the council and elected their own people as members of the council just like Cherokees?

(Counsel for the complainants objects to the foregoing question as incompetent, immaterial, and calling for a statement of facts not shown to be peculiarly within the knowledge of the witness.)

Answer. Yes, sir.

Question. Do you know of your own knowledge whether or not Delaware citizens of the Cherokee nation have ever confined themselves to 160 acres apiece, or whether or not they have gone upon the public domain and made improvements and inclosures of just as much land as they saw fit, just like other Cherokee citizens?

(Counsel for complainants objects to the question as irrelevant and immaterial.)

Answer. Yes, sir.

Question. What official positions have you ever held in the Cherokee nation?

Answer. Well, I have had various positions—clerk, sheriff, member of the council, delegate to Washington, secretary and treasurer, commissioner of the treaty to the Government.

Question. Do you know whether or not the Delawares ever made any claim to any rights in the Cherokee nation other than those you testified about until within the last four or five years?

Answer. No, sir.

Cross-examination is waived by counsel for the complainants.

ROB'T B. ROSS.

UNITED STATES OF AMERICA, }
Indian Territory, Northern District. }

I, Clara Mitchel Wood, a notary public within and for the northern district of the Indian Territory, certify that at the time and place aforesaid Robert B. Ross, a witness on behalf of the defendant in the above-entitled cause, was sworn by me before any question was put to him to tell the truth, the whole truth, and nothing but the truth relative to said cause, and that his answers were taken down by me, and that his deposition as aforesaid was read over to and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and affixed my seal this 22d day of February, 1901.

[SEAL.] CLARA MITCHEL WOOD,
Notary Public.

509 Upon a rule of the Court of Claims upon the Secretary of the Interior there was filed in the Court of Claims two pay rolls, one showing the payment of $406,171.32 in the year 1892 to the Delawares, and one showing the payment of $459,648.90 also to said Delawares, in the year 1894. Said payments are referred to in the testimony and said pay rolls are not printed as they are very voluminous, and it is consented that the foregoing statement be used in place thereof.

Pursuant to a rule upon T. M. Buffington, chief of the Cherokee nation, the following report on the auditor's office frauds was filed in the Court of Claims:

510 & 511 APPENDIX A.

Report on Auditor's Office Frauds.

MUSCOGEE, INDIAN TERRITORY, *June* 12, 1900.

Hon. T. M. Buffington, prin. chief, Tahlequah, Ind. Ter., Cherokee nation.

SIR: In compliance with an act of the national council, approved December 15, 1899, and approved by the President of the United States January 13, 1900, entitled "An act providing for the investigation of the irregularities reported by the committee on claims to have been found in the auditor's office," the undersigned, your com-

mission, duly appointed and commissioned, have the honor to report:

In performance of the duties imposed upon us we have been confronted with many obstacles, some of which we might herein mention:

First. Upon investigation, we find that the reports of the district clerks of the several districts of the Cherokee nation are by no means complete; either there have been many fiscal quarters during which there was nothing to report or the clerks have failed to report them. The law requiring the clerks to report monthly to the principal chief of the Cherokee nation was not passed until about the year 1896, and even these reports we find very incomplete.

Second. The records of the several clerks of the several districts of the Cherokee nation, of certificates issued in their districts have not all been turned in to the executive department of the Cherokee nation as required by law, and among those that have been turned in, we have been unable to find a complete record of certificates issued during the several months and quarters in the several districts respectively; we have, therefore, been com-
512 pelled to rely upon the copies transcribed in the auditor's record of the "Clerk's reports," and whether or not these are true and correct copies of the original reports of the several districts during the last six years, or that they have been changed, modified or enlarged upon, your commission has been unable to determine.

With reference to the reported breaking into the office of the auditor and taking therefrom large amounts of certificates and relative to fraudulent claims, this commission has spared no expense and has used every available means to secure the testimony of witnesses relative thereto. The testimony of such witnesses you will find hereto attached for your information, and is made a part of this report. Many of these witnesses have lived a great distance from the capital and in different parts of the Cherokee nation, and in securing their attendance and procuring their testimony the commission has been necessarily delayed in its work, and has had to use a considerable part of the appropriation on account thereof. In some instances we have been compelled to visit them at their homes.

Unfortunately, for the Cherokee nation and for the progress of this investigation, the Cherokee national council by its act—

"That after claims have passed the inspection of the committee on claims, and have been reported upon, and after the tickets have been audited and cancelled, all certificates composing such claims were required to be burned in the presence of the senate,"—

thus destroying the best evidence of fraud that might have been perpetrated upon the Cherokee people. Again, during the administration of Auditor Mayfield, in the year 1891, the precedent with reference to the registration of claims was changed. Prior to this time every certificate, showing the number, the amount, and to whom issued, comprising such claims were correctly recorded upon

the record of claims in the auditor's office by the auditor,
513 thus showing every item upon which these claims were based, but since the administration of Mayfield, the precedent, as has already been stated, is different. We find nothing recorded upon the record of claims upon which these claims might be based, the only reference made thereto being the number of the claim, the party claiming and the amount claimed.

The changing of this precedent and the burning of the certificates themselves has made it impossible for a satisfactory investigation by this commission of irregularities which might have occurred in the accounts of the auditor.

That there have been many warrants issued based upon fraudulent claims there can be no question, as may be seen by the following statement:

During the last six years, beginning third Monday in November, 1893, there *has* been, based upon national certificates, warrants issued upon the general fund in amounts as follows:

December 11, 1893	$29,965.05
December 7, 1894	55,284.52
December 13, 1895	46,050.25
December 17, 1895	646.00
December 15, 1896	43,128.95
December 1, 1897	45,126.90
December 10, 1898	40,110.20
Total number of warrants issued during the period	$260,311.87

We find that the certificates issued by the several clerks of the several districts during the past six years, beginning the third Monday in November, 1893, — as follows:

Certificates Issued by the District Clerks.

Summary for the year 1894:

First quarter for fiscal year	$9,749.00	
Second quarter for fiscal year	19,380.75	
514 Third quarter for fiscal year	17,761.25	
Fourth quarter for fiscal year	30,990.00	
Total expense for the fiscal year 1894		$77,881.00

Summary for the year 1895:

First quarter for the fiscal year	$26,231.50	
Second quarter for the fiscal year	22,416.75	
Third quarter for the fiscal year	11,759.25	
Fourth quarter for the fiscal year	19,686.00	
Total expense for the fiscal year		80,093.50

Summary for the fiscal year of 1896:

First quarter for the fiscal year	$12,279.25	
Second quarter for the fiscal year	17,201.75	
Third quarter for the fiscal year	11,307.00	
Fourth quarter for the fiscal year	26,140.95	
Total expense for the fiscal year 1896		67,028.95

Summary for the fiscal year 1897:

First quarter for the fiscal year	$8,991.00	
Second quarter for the fiscal year	17,603.25	
Third quarter for the fiscal year	16,160.25	
Fourth quarter for the fiscal year	29,406.90	
Total expense for the fiscal year 1897		72,161.40

Summary for the fiscal year 1898:

First quarter for the fiscal year	$10,351.00	
Second quarter for the fiscal year	15,954.80	
Third quarter for the fiscal year	9,368.81	
Total expense for the fiscal year 1898		*35,674.61

515 Recapitulation for the six years:

Certificates issued for the year 1894	$77,881.00
Certificates issued for the year 1895	80,093.50
Certificates issued for the year 1896	67,028.95
Certificates issued for the year 1897	72,161.40
Certificates issued for the year 1898	35,674.61
Total number of certificates issued for the past six years	$332,839.46

From this grand total of certificates issued the following items must be deducted:

Certificates registered during the past six years but not yet audited	$14,760.97
Amount of private claims audited by A. A. Taylor between council 1898 and November, 1899, not yet appropriated	13,564.80
Amount of private claims audited by senate committee during council of 1899 not yet appropriated	3,860.50
Certificates audited as revenue November, 1893	516.00
Certificates audited as revenue for the years 1894 and 1895	75,998.00

* The jurisdiction of the Cherokee courts expired here and no further certificates issued.

Certificates audited as revenue for the year 1896.....	36,307.00
Certificates audited as revenue for the year 1897.....	26,862.15
Certificates audited as revenue for the years 1898 and 1899.....	5,022.21
Total amount.....	$266,893.03
Leaving a balance on which warrants might lawfully have been based of.....	65,946.43
Showing a balance of illigitimate claims, and for which warrants have been drawn of.....	194,365.44

This item is a great loss to the Cherokee nation, and accounts for a large per cent. of the public debt.

In order to locate these fraudulent claims we have not only examined the different records relative thereto, but we have had the testimony of several witnesses.

By reference to the testimony of J. C. Dannenberg, (pp. 31 to 34 inclusive); T. W. Triplett (pp. 38 to 44 inclusive); and W. M. Gulager (pp. 36 to 38 inclusive) of the evidence herewith submitted, see law, p. 79; you will find some light *light* upon this subject.

The evidence tends to show that the amount of tickets referred to by these witnesses of $4,632 were unlawfully, if not fraudulently, issued, and were refused registration by the auditor. As to why this claim was passed by the council and made into these warrants, numbering B 79, 80, 81 and 82, this commission has been unable to determine. We find from the record of the clerk's reports in the office of the auditor entries of certificates issued by some of the district clerks, which in the opinion of your commission are irregular and unlawful. For example, the clerk of Tahlequah district issued certificates in the amount of ($50) fifty odd dollars to C. D. Pendleton and A. A. Taylor for "refreshments" at the same time and in the same case. While the law provided that the sheriff may furnish jurors with the necessary board and refreshments, we do not think it contemplated anything more than ordinary meat and drink, and certainly $50 or more could not be required to furnish water for the jury. Their board was provided for in other certificates.

Section 63 of the Compiled Laws of the Cherokee nation of 1892, providing:

"Sheriffs, when an arrest shall be made of a person charged
517 with a felony, the prisoner shall be securely guarded until convicted or acquitted, etc." has been repealed by the national council. Nevertheless, since its repeal, hundreds of dollars in a single case of an arrest and detention of a prisoner has been reported by the sheriffs and certificates issued therefor by the clerks, passed the inspection of the auditor, committee on claims, and made into warrants.

The issuing of such certificates, in the opinion of your commission, is unwarranted by law. These are some of the irregularities that appear but, unfortunately for the Cherokee nation, all these un-

lawful and irregular certificates have been destroyed and there remains no evidence by which this commission has been enabled to determine what warrant, or warrants were issued therefor.

With reference to the breaking into of the office of the auditor and taking therefrom of a large amount of certificates, the evidence which your commission has been able to obtain tends to show that said office was unlawfully entered and that a large amount of certificates were either destroyed by fire or stolen away.

That between Saturday afternoon of December 2 and Monday morning, December 4, 1899, there were three entries made upon the record of claims without the knowledge or consent of the committee on claims, or the incoming auditor.

Those items are:

T. A. Chandler	$1,007.00
W. A. Markham	1,300.00
W. W. Hastings	1,731.00

Mr. A. A. Taylor, in his testimony, admits making these entries.

The testimony of T. M. Knight, page 3; R. B. Stan, pages 48 and 49; Stephen Peak, pages 56 to 58, inclusive; E. N. Washbourn, pages 74 and 75, of the evidence herewith submitted, tends to show that these items were made and the missing certificates burned at the time referred to above, and that Mr. A. A. Taylor was in
518 the office on Monday morning, December 4, 1899, before business hours, and had a fire in the stove and the room warm.

The testimony of E. N. Washbourn, pages 74 and 75, inclusive, of the evidence, in the opinion of your commission, explains one of the methods used by the auditor in his speculations in certificates. Mr. Washbourn says that numbers 14, 10 and 18 of national certificates of Delaware district, issued June 30, 1898, for ($6) six dollars each, *was* audited by himself through the regular process, and afterward he identified them in circulation without any sign of cancelation upon their face. This would indicate that these certificates, instead of being canceled and burned in the presence of the senate, as the law directs, were put into circulation again by the auditor.

The testimony of Waddie Hudson, pages 60 and 61 of the evidence herewith submitted, identifies certain forms of blanks furnished by him to the Cherokee nation for the issuance of certificates, which blanks, Mr. Hudson says, were printed September 22, 1897, and January 1, 1898. Many of these blanks bearing prior dates have been used by Mr. Triplett as clerk of the Tahlequah district for the issuance of certificates. Mr. Triplett was then out of office, having retired in the spring of 1897. Mr. Triplett's signature of these certificates is identified by Mr. Hudson, and also by J. C. Dannenberg.

We find that according to Mr. Taylor's testimony that as late as in the fall of 1899 Mr. Triplett presented certificates for registration, which upon their face appeared recently issued, and upon investi-

gation were found to be duplicates. (See A. A. Taylor's testimony, page 77.)

It appears from the testimony that all these large claims that are now pending the action of the senate are based upon national certificates purchased from A. A. Taylor; we therefore think it advisable that action upon all claims now pending, with the exception of those referred to in the testimony of J. R. Hastings, chairman
519 of committee on claims, as having been approved by his committee, be deferred until satisfactory evidence is shown as to their merit.

We further recommend that the United States Indian agent be asked to defer payment of the following national warrants:

No. B 79, issued to T. W. Triplett for	$560
No. B 80, issued to T. W. Triplett for	1,422
No. B 81, issued to W. M. Gulager for	1,200
No. B 82, issued to W. M. Gulager for	1,450
Total	$4,632

And that the national council, when it convenes in regular session in November, abolish the office of auditor of public accounts and that the records be placed in the custody of the executive department of the Cherokee nation.

Respectfully submitted,

C. V. ROGERS,
WILSON O. BRUTON,
Commissioners.

Approved:
J. W. ZEVELY,
Special Inspector.

EXECUTIVE OFFICE, CHEROKEE NATION,
TAHLEQUAH, IND. TER.

I, B. W. Alberty, assistant executive secretary of the Cherokee nation, do hereby certify that the foregoing four and a fraction pages, is a true copy of the report made by C. V. Rogers and Wilson O. Bruton, commissioners appointed to investigate the "irregularities of the auditor's office," as provided by an act of the national council of the Cherokee nation, approved by the principal chief December 15th, 1899, and by the President of the United States Janu-
520 ary 13th, 1900, to the principal chief of the Cherokee nation, and is now on file in the office and in my custody.

Given under my hand and the seal of the Cherokee nation this the 16th day of December, 1901.

[Seal of the Cherokee Nation.]

B. W. ALBERTY,
Assistant Executive Secretary, Cherokee Nation.

The evidence is voluminous and I have not included it in this copy.

B. W. ALBER-Y, *Ass't Sec.*

521 V.—This case having been argued before the Court of Claims and due deliberation having been had, the court rendered the following opinion:

VI.—*Opinion of the Court.*

(Decided February 2, 1903.)

Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE Nation, as a Tribe and Individually; George Bullette, Henry Armstrong, John H. Secondyne, John Young, John Sarcoxie, Jr., Individual Delaware Indians Residing in the Cherokee Nation, and the Business Committee of Such Delaware Indians, John Bullette and Richard C. Adams, Individual Delaware Indians Residing in Said Cherokee Nation and the Representatives of Said Delaware Indians and Said Business Committee, Suing on Behalf of Themselves and All Other Delaware Indians Now or Lately Residing in Said Cherokee Nation and the Children, Descendants, Heirs at Law, and Personal Representatives of All the Deceased Delaware Indians Whose Names Appear upon the Register of Delaware Indians Made in February, 1867, by John G. Pratt, the United States Indian Agent for the Delaware Indians, and on File in the Department of the Interior of the United States, and Known as the "Delaware Register," Plaintiffs,

against

THE CHEROKEE NATION, Defendants.

No. 21139.

WELDON, J., delivered the opinion of the court:

By authority of an act of Congress approved June 28, 1898, entitled 'An act for the protection of the people of the Indian Territory, and for other purposes," (30 Stat. L., p. 490), the Delaware Indians residing in the Cherokee nation were authorized and empowered to bring suit in the Court of Claims within sixty days after the passage of said act against the Cherokee nation for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee nation, dated April 8, 1867.

The twenty-fifth section of said act is as follows, to wit:

"That before any allotment shall be made of lands in the Cherokee nation there shall be segregated therefrom by the commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee nation under agreement of April eighth, eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee nation under said agreement. That the Delaware
522 Indians residing in the Cherokee nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee nation, dated April eighth, eighteen hundred and sixty-seven; or the Cherokee nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States."

In pursuance of the provisions of said statute the complainants, The Delaware Indians, filed a petition within the time limited in the statute, in which petition are alleged certain rights of the Delaware Indians and the violation of those rights by the Cherokee nation. To the petition, the defendant Cherokee Nation filed an answer admitting some of the allegations of the complainants and denying others which will be hereafter noted.

In the fourth article of the petition it is averred that on the 8th of April, 1867, articles of agreement were made between the Cherokee nation, represented by certain delegates duly authorized as parties of the first part, and the Delaware tribe of Indians represented by proper delegates duly authorized, as parties of the second part, which agreement was approved by the President of the United States April 11, 1867. The material portions of such agreement are as follows:

"Whereas by the fifteenth article of a certain treaty between the United States and Cherokee nation, ratified August 11, 1866, certain terms were provided, under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of 96° of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee nation, subject to the approval of the President of the United States; and whereas by a treaty between the United States and the Delaware tribe of Indians, ratified August 10, 1866, the removal of the said Delawares to the Indian country south of Kansas was provided for; and, in the fourth article whereof, an agreement was made by the United States to sell to the Delawares a tract of land, being part of a tract the cession of which by the Cherokees to the United States was then contemplated; and whereas no such cession of land was made by the Cherokees to the United States, but, in lieu thereof, terms were provided, as hereinbefore mentioned, under which friendly Indians might be settled

upon their lands; and whereas a full and free conference has been had between the representatives of the Cherokees and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands and their consolidation with said Cherokee nation:

"Now, therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

"The Cherokees, parties of the first part, for and in consideration of certain payments, and the fulfillment of certain conditions hereinafter mentioned, agree to sell to the Delawares, for their occupancy a quantity of land east of the line of the 96° west longitude, in the aggregate equal to one hundred and sixty acres for each individual of the Delaware tribe, who has been enrolled upon a certain
523 register made February 18, 1867, by the Delaware agent, and on file in the Office of Indian Affairs, being the list of Delawares who elect to remove to the 'Indian country,' to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto, and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line of 96° not already selected and in possession of other parties, and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements according to the legal subdivisions when surveys are made (that is to say, one hundred and sixty acres for each individual), shall be guaranteed to each Delaware incorporated by these articles into the Cherokee nation, nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee nation imposed upon native citizens thereof.

"Provided, that nothing herein shall confer the right to alienate, convey, or dispose of any such lands except in accordance with the constitution and laws of said Cherokee nation. * * *

"And the said Delawares further agree that there shall be paid from their funds now or hereafter to come into the possession of the United States a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned and removing to the Indian country sustains to the whole number of Cherokees residing in the Cherokee nation. * * *

"And that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is $678,000.

"And the Delawares further agree that in calculating the total amount of said national fund there shall be added to the said sum

of $678,000 the sum of $1,000,000, being the estimated value of the Cherokee neutral lands in Kansas, thus making the whole Cherokee national fund $1,678,000; and this last-mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund. * * *

"All cash, and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under the agreement, shall be invested and applied in accordance with the 23d article of the treaty with the Cherokees of August 11, 1866.

"On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered as above provided shall become members of the Cherokee nation, with the same rights and immunities, and the same participation (and no other) in the national funds, as native Cherokees, save as hereinbefore provided.

"And the children hereafter born of such Delawares so incorporated into the Cherokee nation shall, in all respects, be regarded as native Cherokees."

Signed. * * *

524 At the outset of the discussion of the legal and equitable rights of the parties in this proceeding, and the proper determination of the issue presented by the record, we must look to the statute by which the court is given jurisdiction, as by that law, the power of the court is measured and determined. Beyond it we have no power of adjudication. There is no controversy or question as to the form of the proceeding and rightful character of the petitioners. Some objection was made as to the want of proper parties as complainants, but that contention was abandoned in the trial of the case.

The statute gives the power to either party to bring suit in this court for the purpose of determining the estate or interest of the Delaware Indians in and to the land and funds of the nation under their contract and agreement with the Cherokee nation dated April 8, 1867. The purpose of the statute is to settle by judicial adjudication the rights of the respective parties in and to the lands and funds of the Cherokee nation.

In order to settle those rights, we must determine by construction of the agreement the extent of interest—the estate which the Delawares acquired in the land granted to them by the Cherokee nation, and their rights in the funds of the nation as affected by the action of the political department of the government of the Cherokees.

The jurisdiction of the court as to the subject-matter of investigation is defined by the statute in the words following, to wit: "For the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee nation dated April 18, 1867." Under that provision of the law two questions arise: First, What are the rights and equities of the Delaware Indians in and to the land sold or agreed to be sold by the terms of the agreement made as aforesaid; and second, What are the rights and equities of the Delaware

Indians in and to the funds of the Cherokee nation as affected by the alleged misconduct of the respondent?

We will consider the questions in the order stated, reciting so much of the bill as is necessary to the development of the issue.

The fifth paragraph of the petition alleges, in substance, that at the date of making and approval of the agreement there were 985, individuals of the Delaware tribe who had been enrolled upon the register referred to in the agreement, being the list of Delawares who elect to remove to the "Indian country;" that the complainants stated herein were among the 985, enrolled as aforesaid; that 212, of the said 985, are now living and residing in the Cherokee nation; that 773, of the 985, have died since the making and approval of said agreement, leaving descendant heirs at law and personal representatives; that the individual complainants herein are among the children and heirs at law.

That allegation of the petition is substantially admitted—not noticed by the respondents.

The sixth paragraph of the petition avers that the Indians bought 157,600 acres under and by virtue of said agreement, and paid therefor the sum of $157,600, being at the rate of $1 per acre.

This allegation of the petition is denied by the respondents, in this, to wit: That the Delawares purchased only a life estate in 160 acres *per capita*.

Paragraph 11, avers, in substance, that the Delawares are entitled legally and equitably to 157,600 acres of land, which they have
525 selected and segregated from the other lands of the Cherokee nation. This allegation is denied, except as to the right of each individual Delaware registered, as aforesaid, now living may be entitled to 160 acres of land under the terms of the contract between the Delawares and Cherokee nation, and to receive in any further allotment not less than 160 acres of said lands. It is denied that said amount of land has been segregated as alleged, and denies the right or authority of the Delawares or any other persons to segregate or set apart that portion of land. As to the division of said land, it is alleged on the part of the defendants that no allotment can be made except to assign to each member of the Cherokee nation an equal portion thereof, reserving to the registered Delawares living at the time at least 160 acres.

It is substantially averred in the twelfth paragraph of the petition that in violation of the rights of the Delaware Indians the Cherokee nation has admitted other persons not Cherokees to share in the lands and funds of the Cherokee nation, and thereby diminished the share which the Delawares are entitled to have and receive in such lands and funds of the Cherokee nation, and for which they paid their money. To that allegation it is insisted by the defendants that whatever has been done has been in accordance with and by virtue of the sovereign powers of said nation, properly and legally exercised under the laws of the nation, and that the Delawares have no right to complain. It is insisted by the defendants that the court

has no right to determine how many persons have been so admitted to the Cherokee nation.

The thirteenth paragraph charges that persons have been admitted to share who were not entitled to share in the funds and lands of the nation. As to allegations of said paragraph as to the improper use of funds of said Cherokee nation, they are denied on the part of the respondents.

The issue as to the title and right to the 157,000 acres is contained in the allegations of the eleventh paragraph of the petition, which is in substance that the Delawares are legally and equitably entitled to the said land, and which they have selected and segregated, and that they are also entitled to share with the Cherokees *pro rata* in the division about to be made under the provisions of the act of Congress giving this court jurisdiction to determine the right of the Delawares in the lands and funds of the Cherokee nation. In other words, it is insisted that the claimants are to have in the division, first, the 157,000 acres allotted to them, and that after such allotment they are entitled to share in the division of the rest of the land and funds upon an equality of right with the citizens of the Cherokee nation.

The decision of that contention depends upon the construction of the agreement made on the 8th day of April, 1867, in ascertaining the extent of the estate or right which by the terms of that agreement was conveyed to the claimants. If an absolute fee-simple title was conveyed, or intended to be conveyed, having because of such title the descendible qualities of an estate absolute, then the Delawares own that amount of land in the distribution or allotment of the lands constituting a part of the national lands of the Cherokee nation.

In the decision of the question as to what the rights of the petitioners are in the lands and funds of the Cherokee nation we must determine what the legal effect of the agreement is on which they base their right; and if from the words of the instrument there is
an indication of the character of the estate intended to be
526 conveyed, there is no necessity to look beyond the words of the contract in ascertaining the rights of the parties. The obligation of each must be determined within the authority of the statute giving the court jurisdiction, because upon the authority of that statute the court is invested with whatever jurisdiction and power it exercises in its decision of the cause.

In the consideration of the matter, we must not lose sight of the fact that the agreement which constitutes the basis of this proceeding was made between two tribes or nations of Indians of equal power and capacity to contract, neither having as against the other superior facilities as contracting parties, but being on an absolute equality in dealing with and protecting their respective rights. They are both presumed to have known the full measure of their interests and of equal ability in dealing with the subject-matter about which they contracted.

The agreement in substance provides that the parties of the first

part, being the Cherokee nation, in consideration of certain payments and the fulfillment of certain conditions, agreed to sell to the Delaware Indians for their occupancy a quantity of land in the aggregate equal to 160 acres for each individual of the Delaware tribe, who was then enrolled upon a certain register made in 1867, being a list of the Delawares who had elected to remove to the "Indian country," to which list there might be added by the consent of the Delaware council the names of such other Delawares as might desire to be added thereto; that the selection of the lands might be made by said Delawares in any part of the Cherokee reservation east of a certain line, not already selected and in the possession of other parties, and in case the Cherokee lands should be thereafter allotted among the members of said nation it is agreed that the aggregate amount of land provided by the Delawares should include their improvements according to legal subdivisions, that is to say, 160 acres for each individual, shall be guaranteed to each Delaware incorporated by these articles into the Cherokee nation, nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner without his consent; but the same shall be subject to conditions and restrictions as are by the laws of the nation imposed on citizens thereof.

And it is provided that nothing therein shall confer the right to alienate, convey, or dispose of such lands except in accordance with the constitution and laws of said Cherokee nation.

In the conclusion of the agreement it is provided, that on the fulfillment by the Delawares of the foregoing stipulation the members of the tribe registered as above provided shall become members of the Cherokee nation, with the same rights and immunities and the same participation (and no other) in the national funds as native Cherokees save as herein provided, and the children hereafter born of such Delawares so incorporated into the Cherokee nation shall in all respects be regarded as native Cherokees.

Confining ourselves to the terms of the agreement, we find that the estate is qualified by the word "occupancy," and nowhere in the instrument do we find the words of inheritance or perpetuity attached to the grant. Whatever may be said of the immediate parties to the instrument, as to their technical acquirements in the law in the designation and conveyance of estates or interests in the land, it must be assumed from the phraseology of the contract that it was drawn by some one having that technical knowledge of the law of conveyance which would enable the parties to express in apt
527 words of designation a fee simple or absolute title, if such was intended by the agreement. The terms "agree to sell" simply operate in the sale on such an estate as the parties intended to convey, as exemplified by the words used in the conveyance. The sale was to the Delawares for their "occupancy," thereby impressing a limitation on the estate contemplated by the parties.

It is insisted by the complainant that the grant expressed by the terms of the agreement conveys to the Delawares an absolute estate, a right without end or limitation in the estate granted, an estate of

inheritance descendible to the heirs or successor of the original grantees.

The court must in the construction of the words of the grant apply the rules of construction which from the earliest times down to the present have been adopted by courts in the measurement of estates from the covenants of the conveyances. If the grant is made to a person for his occupancy, can it be successfully maintained that by the most liberal construction of the grant that it extends beyond the period of his actual life? In the execution of the contract as to the land intended to be granted, the Cherokee nation was dealing with registered Indians and with those who might be registered in pursuance of the terms of the agreement. As to those born thereafter, express provision is made; they were in all respects regarded as native Cherokees. Can it be said, that being entitled only to the rights of native Cherokees, they have any interest in the lands granted to the Delawares beyond that which might result to them from the accretion of the 157,000 acres of land of the nation incident to the exhausted estate of the registered Delawares?

Does the sale and conveyance of the lands to the registered Indians inure to the benefit of those born thereafter, and who would by the principles of the common law succeed as heirs to the estate, having the qualities of an estate of inheritance? After the occupation of the registered Indians has ceased by their death or abandonment, is not the land relieved of the estate provided by the grant to the registered Indians, and must it not form a part of the common land of the nation as against unregistered Indians, they being placed on an equality with the native Cherokees?

The agreement must be considered in all its parts, and from it, as a whole, must be deduced the true interpretation of its provisions. Two classes of Indians were provided for by the terms of the agreement: First, registered, who constituted the basis of the grant of the 157,000 acres of land, and second, children of the registered Indians born after the date of the agreement.

As to the first, in the closing paragraphs of the contract it is in substance provided, that upon the fulfillment of the stipulations they were to become members of the Cherokee nation, with the same rights and immunities and the same participation in the national funds (and no other) as native Cherokees, save as hereinbefore provided, and the children hereafter born shall in all respects be regarded as native Cherokees.

As to the registered Indians, they were to be incorporated into the body politic on an equality with the native Cherokees in the national fund, superadded thereto the rights hereinbefore provided, but no reservation of that kind was made in behalf of the children of such registered Indians. They being a class distinct from the
528 registered Indians, were placed by the very terms of the agreement on a perfect equality with the native Cherokees. They are to be like unto them in all respects. There is a class of Indians, perhaps very insignificant in numbers, who are not provided for, and that is the Indian who was in being on the 8th of April, 1867,

and who was not on the register roll, and who did not within one month thereafter remove to the Indian country.

As to such Indians no provision is made, so that the classification becomes the registered Indians and children born after said date to said registered Indians.

It is not claimed by counsel for the petitioners that the agreement conveyed a technical title in fee simple, but that the Cherokees conveyed whatever title they had in the lands by the agreement of 1867, which operates in law as an estate equivalent to fee simple. It is said, "It is not important as between the complainants and the respondents whether this title was a fee simple or an Indian title of occupancy or some other title," but it is interesting to note that in *Holden v. Joy* (17 Wal., 211) the court uses the following significant language. We quote from the syllabus:"

"The Indian tribes are capable of taking as owners in fee simple lands by purchase where the United States in form, and for a valuable and adequate consideration, so sell them to them."

In order to maintain the theory of the respondents our attention is called to the case of the *Cherokee Nation v. Journeycake* (155 U. S., 213, 214, and 215), affirming the decision of this court (28 C. Cls. R., 281), in which it is alleged by counsel for the respondents that the Supreme Court decided that the Delawares did not take in fee under the contract of 1867.

It is contended on the part of the complainants, that whatever was said by the court in that case upon the question of the title of the Indians in and to the lands was not required by the issue in that case; and therefore the decision is not binding on this court in the present proceeding; that the matter is not *res judicata*, but open to the investigation and decision of this court. Conceding that the tenure by which the Delaware Indians held their lands under agreement was not properly within the purview of the issue in the case of *Journeycake* (*supra*) the court may still regard that decision in the light of an authority entitled to great weight as persuasive in the proper construction of the terms of the agreement.

In the *Journeycake case* (*supra*) it is said: "The individual Delawares took their homes in and remaining in the Cherokee reservation and as lands to be considered in any subsequent allotment in severalty among the members of the Cherokee nation * * * ."

"Neither should too much weight be given to the fact that the Delawares were to pay for their homes at the rate of $1 per acre, for by that purchase they acquired no title in fee simple."

"This Indian Territory was looked upon as the permanent home of the Indians. The Government was making the effort to bring within its limits all the Indians from all parts of the land, and it was not in the contemplation of the Government or of these contracting parties that at any early day these lands would be thrown open to settlement and sale, but rather the idea was that they were to be continued as their permanent place of abode. Consid-
529 ered as such, so long as each individual Indian, whether Delaware or Cherokee, had his particular tract for occupancy as a

home it was not unnatural or unequal that the vast body of the lands not thus specifically and personally appropriated should be treated as the common property of the nation, in respect to which all who were members thereof, whether by birth or adoption, should be entitled to equal rights and privileges."

In the agreement of the 8th of April, 1867 (*supra*), reference is made to the fifteenth article of the treaty between the United States and the Cherokee nation, made on the 11th of August, 1866, and the treaty of August 10, 1866, between the United States and the Delaware Indians, providing for the removal of the Delaware tribe to the Indian country south of Kansas, and a further proviso and agreement made by the United States to sell said tribe a tract of land being a part of a tract, the cession of which was then contemplated by the Cherokees, and that in view of such treaties the agreement was made which is the subject of contention in this proceeding.

It is insisted, that by the terms of the foregoing treaties the Delaware Indians were, by the conveyance contemplated, to receive in consideration of their payments an absolute title in the land, and that the same rights were to be given the Delawares in the agreement of 1867, such agreement having been made in lieu of the conveyance under the treaty of August, 1866.

The recitals in the agreement clearly show that it was the result of the failure to locate the Indians under those treaties which made the agreement of 1867 necessary, *but it does not necessarily follow* that the agreement is identical in legal effect.

The treaty of 1866, provided in substance that in case any tribe settling in the country should decide to preserve their tribal organization and maintain their laws and customs, they should have a district of country set off by metes and bounds equal to the 160 acres of land for each man, woman, and child of said tribe. But no such provision is found in the agreement or treaty of 1867. The terms of that agreement provide that the registered Indians shall become members of the Cherokee nation "with the same rights and immunities and the same participation (and no other) in the national funds as native Cherokees, save as hereinbefore provided."

It is said by the Supreme Court in the case of *Journeycake* (155 U. S. 205): "There is no provision for setting apart a distinct body of land in any portion of the reservation for the Delaware tribe, but the agreement is to sell them for their occupancy a quantity of land equal in the aggregate to 160 acres for each individual Delaware 'who may remove to the Indian country,' and the selection of the amount to be purchased by them may be made by said Delawares in any part of the Cherokee nation east of said line of 96° not already selected and in the possession of other parties."

It is stated by counsel for the complainant, that the Cherokee nation in defending the action of the Delawares in the litigation in the *Journeycake case* (*supra*) insisted that the Delawares had bought a definite number of acres; and that they were not entitled to participate in the distribution of the funds arising out of other lands.

It is sufficient answer to that position to say that such contention

was not sustained by the Supreme Court, and does not, therefore, work an estoppel on the contention of the respondent in this proceeding.

530 The recitals in the agreement of 1867 do not justify the conclusion or inference that under that agreement the parties intended to convey and receive by such conveyance the full extent of the rights which might have accrued to the grantees by virtue of the provision of the treaties of 1866.

It is expressly stated in the recitals of the agreement that no such cession of land was made to the United States, but "in lieu thereof terms were provided, as hereinbefore named, under which friendly Indians might be settled on their lands." It was because there had been a failure of the policy and plan contemplated and provided by the treaty of August 11, 1866, that a new agreement had to be made, and the result of that failure is the contract of 1867. The sixteenth section of the treaty, August, 1866, provides that Indians might settle west of the ninety-sixth degree, the land to be taken in compact form in quantities not exceeding 160 acres for each member of the tribe, the boundaries of the district to be distinctly marked and the land "to be conveyed in fee simple" to each of said tribes, to be held in common in severalty as the United States might determine.

It will be seen that the fifteenth and sixteenth sections of the treaty of August 11, 1866, make a distinction founded upon the settlement of the Indians either east or west of the ninety-sixth degree; east of the line it is grant of settlement and possession, but west of that line the grant is to be in fee simple. Recurring to that treaty as indicative of what the parties intended by the contract of 1867, it is worthy to note that the term "fee simple" is used as to one grant and omitted as to the other.

The Cherokee nation, in the policy of their national development, granted a fee simple in one part of their country as to the rights of Indian tribes which desired a change of their habitat, but to another depending on the location of the grant a different tenure of right or estate.

We have discussed the rights of the respective parties from the standpoint of what is apparent on the face of the contract, but it is one of the contentions of the complainants that the proof in the case establishes the fact that the Delaware Indians understood and believed at the time of the execution of the agreement that they were getting a right in the land coextensive with an absolute ownership, and that the land was to belong to the Delaware blood in perpetuity.

Much testimony has been taken on that subject, the large preponderance of the witnesses being Delawares, with a few Cherokees. Without a lengthy discussion of the question as to whether it is competent to attempt to establish the interpretation of the agreement by such testimony, it is sufficient to say that it would be a most dangerous precedent after such a lapse of time to permit a few parties, mostly on one side of the controversy, to give construction

to the agreement by their recollection of what they understood to be the extent of their rights at the time the agreement was executed.

As has been said, this is a litigation not between the United States and "an unlettered people," but between litigants of the same generic people, each having the same ability of comprehension and sagacity in the assertion and maintenance of their respective interests and rights.

Whatever of ambiguity there may be incident to the contract of the parties it arises on the face of the instrument and belongs
531 to that class denominated in the law as a patent, and therefore must be dealt with from the terms and words in which the parties have sought to exemplify their agreement.

If it were a latent ambiguity arising from collateral circumstances or matter, the condition would be subject to the introduction of parol evidence; but being patent if at all, the evidence offered of witnesses and papers is incompetent. (69 Ala., 140; 1 Mason, 9; 8 Lea, 499; Greenleaf's Evidence, secs. 300, 301.)

It is true, that in construing a contract, as in considering a statute, the court should look into the circumstances and conditions under which it was made or passed, but that is not in derogation of the rule that parol evidence is inadmissible to vary or even construe a contract, except to relieve the parties from the embarrassment of a latent ambiguity.

To maintain the contention in this particular on the part of the complainant our attention is called to the case of *United States v. Payne* (8 Fed. Rep.); *Worcester v. Georgia* (6 Pet., 515); *Miami County v. Breckenridge* (12 Kans.); *Kansas Indians* (5 Wall., 737); *Choctaw Nation v. United States* (119 U. S., 1).

We have most carefully considered those cases and others cited, and do not find in them a justification to permit the complainant to introduce the testimony in the record in order to show that some of the beneficiaries understood that the Indians were to get an estate absolute in the lands purchased, thereby giving construction and interpretation to the words of the agreement.

The question of the right of a dissatisfied portion of the Cherokee people represented by the Eastern band of Cherokees was before the Supreme Court in the case of that band against the United States, reported in 117 U. S., 288, and in that connection the Supreme Court said:

"While the treaty of 1846 was under negotiation one William H. Thomas appeared in Washington as representative of Cherokees in North Carolina and urged a recognition of their demands for the *per capita* money and the removal and subsistence money under articles 8 and 12 of the treaty of 1835. He had obtained a statement from one of the commissioners who negotiated that treaty on the part of the United States, from several respectable persons who were privy to the negotiations, and from some of the Cherokees who signed the treaty, as to the meaning which should be given to certain terms used in it; and we are referred to these documents as though they should have some influence upon the construction of

those terms. But it is too plain for controversy that they can not be used to control the language of the treaty or guide in its construction."

The law of real property is to be found in the law of the situs. The law of real property in the Cherokee country therefore is to be found in the constitution and laws of the Cherokee nation.

In the case of *Journeycake v. Cherokee Nation* (28 C. Cls. R., 281, 303) the court, by Chief Justice Nott, had reason to examine this law of property, and made the following abstract of it:

"The preamble of their constitution, September 6, 1839, like that of the Constitution of the United States, sets forth the general purpose of the instrument:

"'We, the people of the Cherokee nation in national con-
532 vention assembled, in order to establish justice, insure tranquillity, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom, acknowledging with humility and gratitude the goodness of the Sovereign Ruler of the Universe in permitting us so to do, and imploring His aid and guidance in its accomplishment, do ordain and establish this constitution for the government of the Cherokee nation.'

"The constitution then takes up (and it is most significant that it does so by its first article) the subject of paramount importance in the Indian mind—of more importance than the form of government, than the right of representation, than the right of trial by jury, or of *habeas corpus*, or of any of those principles of civil liberty which in the Anglo-Saxon mind are held supreme—the subject of their lands:

"'SEC. 2. The lands of the Cherokee nation shall remain common property; but the improvements made thereon, and in the possession of the citizens of the nation, are the exclusive and indefeasible property of the citizens, respectively, who made or may rightfully be in possession of them: *Provided*, That the citizens of the nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements in any manner whatever, to the United States, individual States, or to individual citizens thereof, and that whenever any citizen shall remove with his effects out of the limits of this nation, and become a citizen of any other government, all his rights and privileges as a citizens of this nation shall cease: *Provided, nevertheless*, That the national council shall have power to readmit, by law, to all the rights of citizenship any such person or persons who may at any time desire to return to the nation, on memorializing the national council for such readmission.

"'Moreover, the national council shall have power to adopt such laws and reglations as its wisdom may deem expedient and proper to prevent citizens from monopolizing improvements with a view of speculation.'

"The amendment of 1866 modifies the foregoing as follows:

"'SEC. 2. The lands of the Cherokee nation shall remain common property until the national council shall request the survey

and allotment of the same, in accordance with the provisions of article 20 of the treaty of 19th of July, 1866, between the United States and the Cherokee nation.'

"With these restrictive provisions should be considered the brief grant which the constitution contains of legislative power:

"'SEC. 14. The national council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the nation which shall not be contrary to this constitution.'

"The legislation of the Cherokees recognizes again and again the communal character of the seizin or occupancy of the land. It is not 'lawful for any citizen of the Cherokee nation to sell any farm or other improvement in said nation to any person other than to a *bona fide* citizen thereof;' nor 'to rent any farm or other improvement to any other person than a citizen of the Indian Territory.' (Revised Code, 1874, art. XXI, sec. 112, p. 234.) 'No person shall be permitted to settle or erect any improvement within one-fourth of a mile of a house, field, or other improvement of another citizen without his, her, or their consent, under the penalty of forfeiting such improvement and labor for the benefit of the original
533 settler; provided, it may be lawful, however, where a settler has a field one-half mile or more from his residence, and where there may be a spring or running water and timber, for another citizen to improve and settle one hundred yards from such field so situated.' (*Act 24th September*, 1839, *id.* p. 249.)

"The law regulating intermarriage with white men or foreigners provides that should a citizen of the United States or any foreign country 'become a citizen of the Cherokee nation by intermarriage,' and be left a widower, he shall continue to enjoy the rights of citizenship unless he shall marry a person 'having no rights of Cherokee citizenship by blood; in that case, all of his rights acquired under the provisions of this act shall cease.' (Revised Code, 1874, art. XV, sec. 74, p. 223.) If he abandons his wife, he 'shall thereby forfeit every right and privilege of citizenship' and shall 'be removed from the nation.' (Sec. 75.)"

With this system of land law before us, it is unreasonable that this agreement was intended to be in derogation of the system and contrary to the usages of occupants throughout the entire Indian country from the Atlantic to the Pacific. At the time the agreement was entered into the citizens of the Cherokee nation held no other right or interest in the land than the right of occupancy as communal owners. The common law did not prevail in the Cherokee country, and an estate in fee simple absolute was a thing utterly unknown. After the agreement was executed and went into effect there were Cherokees by blood having a right of occupancy, and Cherokees by adoption, the Delawares, having a right of occupancy. The only distinction that can be made between them was that the Cherokees bought their right of occupancy from the United States, and the Cherokees by adoption bought their right of occupancy from the Cherokee nation, and that is a distinction without a differ-

ence. The agreement must be construed with reference to the constitution and laws of the Cherokee nation.

The second subject-matter embraced in the statute of our jurisdiction is the fund belonging to the Cherokee nation. It is substantially averred in the twelfth paragraph of the petition that in violation of the rights of the Delawares the Cherokee nation has admitted other persons not Cherokees to share in the lands and funds of the nation, and thereby diminished the share which the claimants are entitled to receive of the funds of the nation. To the allegation of that paragraph the respondents answer that if any persons have been admitted as citizens of the nation it has been done in accordance with and by virtue of the sovereign power of the nation.

The complainants insist that they have a right to participate in the communal property of the Cherokee nation when the same comes to be divided or distributed in the ratio of one to thirteen and seventy-eight one-hundredths (1 to 13.78).

It is contended that while it is true the Supreme Court has said that the rights of property of the native Cherokees spring from citizenship, it does not necessarily follow that persons who are made citizens for the purpose of giving jurisdiction over them to the Cherokee national government have a right to participate in the common property.

The objection on the part of the complainants to the incorporation of citizens as alleged has reference more particularly to inter-
534 married citizens of the nation. It is contended that while they may be citizens in a political sense, they have no rights except those purely political.

To support the theory on the part of the complainants the attention of the court is called to article 5 of the Cherokee treaty of 1835 (7 Stat. L., 478), under which it is alleged the Cherokee nation has exercised its rights of self-government previous to the act of June 28, 1898.

We see by this article that—

"The United States hereby covenant and agree that the lands ceded to the Cherokee nation in the foregoing article shall, at no future time, without their consent be concluded (included) within the territorial limits or jurisdiction of any State or Territory, but they shall secure to the Cherokee nation a right by their national council to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their people or such persons as have connected themselves with them: *Provided*, That none of the laws of the Cherokee council shall be inconsistent with the Constitution and laws of the United States."

The latter part of the above quotation seems to recognize two classes of inhabitants, to wit, the people of the Cherokee nation, and such persons as have connected themselves with them, thus recognizing a condition of the native people of the nation and other persons, making no distinction between the two classes of persons.

In the case of the *Cherokee Nation v. Journeycake* (*supra*) it is said

in relation to the rights of the Delawares to participate in the funds arising from the sale of a portion of the land of the nation, "that the thirteen millions of acres, whether properly styled its 'common property' or its 'public domain,' belonged to the Cherokee nation as a nation is beyond dispute." The constitution of the Cherokee nation, under which the persons against whom the petitioners complain were introduced into the body politic, was adopted by the nation in 1866, and from that time until the present it has been in force as the constitution of the nation. It was in force at the time the contract was made by the Delawares. No effort has been made to invalidate it, and by the voluntary act of the Delawares they became a part of the nation at the time the provision of the constitution was in force under which from time to time the admission of persons has been allowed, and without a formal decision of its legality, it is the opinion of the court that the complainants are estopped from questioning the binding force of the constitution.

The Supreme Court in the case of the *Eastern Cherokee Indians v. Cherokee Nation* (117 U. S., 288) *is* decided in substance: "By treaties with the Cherokees the United States have recognized them as a distinct political community, so far as inhabitants, as to specify and require negotiations with them in that character."

Being clothed with the characteristics of a distinct political community, the nation must have incident to it the right and power to admit to citizenship such persons as it may desire, and, being admitted to citizenship, they partake of all the rights of a citizen in a political sense and an equality in common with the other
535 citizens in property and funds of the body politic. The communal property of the nation becomes theirs in the same sense that it is common to other citizens.

It is charged in substance in the fourteenth and fifteenth paragraphs of the bill that the Cherokee nation has improperly and without right used its communal funds and expended the same wastefully and lavishly, and thereby prevented the Delawares from receiving a just and proper share in the Cherokee funds.

This in substance is a charge of maladministration on the part of the political power of the nation in the discharge of its function, the consequences of which *is* common to the Cherokee people and the Delawares; but it is insisted that the whole of the amount thus improperly and fraudulently administered shall be charged against the Cherokee people and that the share of the Delawares shall be exempt from any diminution in consequence of such fraudulent use of the fund.

The allegation of the petition as to the improvident and unlawful use of the fund is denied by the respondent, and that the court is without power under the statute to make an investigation of the alleged fraudulent and improper use of the fund.

The question presented by the averment of the petition in respect to the manner in which the nation has discharged the functions of its legislative authority, or the executive authority of the nation, involves the entire administration of the political and executive de-

partments of the government from the time of the admission of the Delawares under the contract of 1867, to the bringing of this suit, during all of which time the complainants were a part of the body politic represented by such nation and it is not shown that the Delawares in any responsible form opposed in any way the policy or the measures adopted by the nation in its administration of the funds of the nation.

By the introduction and admission of the Delawares as a part of the Cherokee nation they became a part of the people of such nation and bound in common with the Cherokees by the political power of the nation in reference to the communal funds of the nation.

It would be extraordinary indeed if Congress intended that this court should, under the powers of the statute, examine into the acts of the nation so as to correct the mistaken policy of the nation or its alleged lavish expenditure of its funds.

In this connection it is proper to note the intervening petitions of the "Keetowah Society of the Cherokee Nation, being an organization of full-blooded Cherokees."

In the original petition to which the intervening petition is an adjunct the claim is made by, as they allege themselves, "full-blooded Cherokees."

The ground on which the Delawares base their claim is that as to them, because they are Delawares, there is a jurisdiction in this court to adjudge and decree redress against the alleged unlawful acts of the Cherokee nation. From what is said as to the rights of the Delawares it must follow that as to the claim of the intervenors there can be no possible jurisdiction in this court.

The statute recognizes two distinct parties which are clothed as against each other with the qualities of a litigant, to wit, the Delawares and Cherokees, and either party may become the complainant,
but there is no right given to any part of the Cherokee nation
536 to become as against the nation a complainant, and therefore as to the complainants in the intervening petition there is no jurisdiction in the court, and that petition is therefore dismissed. If they have any just cause to complain, they must seek some other jurisdiction clothed with the power to adjudicate their rights founded on their grievances.

This being a proceeding in equity, no findings of fact are required, and therefore none are made. The order of the court is that the petition of the complainants be dismissed.

VII.—*Decree.*

Thereafter the court, on February 2, 1903, made its decree of dismissal as follows:

537 In the Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE Nation, etc., Complainants,
against
THE CHEROKEE NATION, Defendants.
No. 21139.

At a Court of Claims held in the city of Washington, on the second day of February, A. D. 1903.

This cause coming on to be heard upon the briefs and arguments of counsel, and the same having been duly considered, it is by the court this day ordered, adjudged and decreed that the petition of the complainants filed herein be, and the same is hereby, dismissed.

BY THE COURT.

538 VIII.—*Application for and Allowance of Appeal.*

Thereafter the plaintiffs and complainants prayed for an appeal from said decree, which appeal was allowed on the 19th day of February, 1903, and is a- follows:

539 In the Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE Nation, as a Tribe and Individually; George Bullette, Henry Armstrong, John H. Secondyne, John Young, John Sarcoxie, Jr., Individual Delaware Indians Residing in the Cherokee Nation, and the Business Committee of Such Delaware Indians, John Bullette and Richard C. Adams, Individual Delaware Indians Residing in said Cherokee Nation and the Representatives of said Delaware Indians and said Business Committee, Suing on Behalf of Themselves and All Other Delaware Indians Now or Lately Residing in said Cherokee Nation and the Children, Descendants, Heirs-at-law, and Personal Representatives of All the Deceased Delaware Indians Whose Names Appear upon the Register of Delaware Indians Made in February, 1867, by John G. Pratt, the United States Indian Agent for the Delaware Indians, and on File in the Department of the Interior of the United States and Known as the "Delaware Register," Plaintiffs,
against
THE CHEROKEE NATION, Defendants.
No. 21139.

540 From the decree rendered in the above-entitled cause on the 2nd day of February, 1903, in favor of the defendants,

the above-named plaintiffs, by their attorney, Walter S. Logan, on this the 19th day of February, 1903, make application for and give notice of an appeal to the Supreme Court of the United States.

WALTER S. LOGAN,
Attorney for Plaintiffs and Appellants,
27 William Street, Borough of Manhattan,
City of New York.

The above appeal was allowed this 19th day of February, 1903, in open court.

Filed this 19th day of February, 1903.

541 IX.—*Stipulation of Counsel as to Record on Appeal.*

In the Court of Claims.

THE DELAWARE INDIANS, ETC., Plaintiffs,
against
THE CHEROKEE NATION, Defendants. } No. 21139.

It is hereby stipulated and agreed between the attorneys for the respective parties hereto that the foregoing record, as changed and amended, shall be the record to be forwarded by the clerk of the Court of Claims, as the record on appeal to the Supreme Court, subject to approval by the Court of Claims.

Dated March 18th 1903.

WALTER S. LOGAN,
Attorney for Plaintiffs & Appellants.
WM. T. HUTCHINGS,
Attorney for Defendants & Appellees.
J. J. H.

542 Court of Claims.

THE DELAWARE INDIANS RESIDING IN THE Cherokee Nation, etc., Complainants,
against
THE CHEROKEE NATION, Defendants. } No. 21139. In Equity.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true copies of the pleadings and—of the evidence in the above-entitled cause—of the opinion of the court—of the decree of the court—of the application of the complainants for, and the allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 19th day of March A. D. 1903.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 18871. Court of Claims. Term No. 240. The Delaware Indians Residing in the Cherokee Nation *et al.*, appellants, *vs.* The Cherokee Nation. Filed March 19, 1903. File No. 18871.

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JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 240.

THE DELAWARE INDIANS, RESIDING IN THE CHEROKEE NATION, ET AL, APPELLANTS,

against

THE CHEROKEE NATION, APPELLEES.

Brief on Behalf of the Delaware Indians, Etc., Appellants.

WALTER S. LOGAN,
CHARLES M. DEMOND,
Of Counsel for Appellants.

THE LAW REPORTER COMPANY, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 240.

THE DELAWARE INDIANS, RESIDING IN THE CHEROKEE NATION, ET AL, APPELLANTS,

against

THE CHEROKEE NATION, APPELLEES.

Brief on Behalf of the Delaware Indians, Etc., Appellants.

This is an appeal from a final decree of the Court of Claims (537), which on February 2, 1903, dismissed the petition filed by the Delaware Indians.

(References to the record refer to *original* paging.)

The opinion of the court below is seen at page 521.

Brief Statement of Facts.

Preliminarily, it is sufficient to state that the Delaware Indians, under authority of an act of Congress of June 8, 1898 (the Curtis act), brought the present suit for the purpose of determining their rights as against the Cherokee Nation, by virtue of an agreement or treaty (5–8), made between the Cherokees and the Delawares, and dated April 8, 1867. The Delawares contended that they, by paying $157,000, obtained as a *tribe* or as individuals, under this agreement, an *aggregate* body of land, which they have selected and improved in various sections of the Cherokee

domain, amounting in all to 157,600 acres. The Delawares *further* contended that they bought from the Cherokees rights of citizenship by making *additional* payments under this agreement (of $121,824.28), and that thereby, in addition to the 157,600 acres of land, they became entitled to share equally with all other Cherokees in the remaining lands and funds of the Cheorokee Nation.

The court below dismissed the bill (it should have fixed the Delawares' rights) upon the theory that the only rights secured to the land in question under this agreement were life interests or life estates in 160 acres of land in each of the 985 Delawares who were on a certain roll of Delawares when the agreement was made, and that as these 985 Delawares from time to time died, their individual interests in said 160 acres lapsed, and the land fell back into the common domain of the Cherokee Nation.

After specifying the errors assigned, the facts will be more fully set forth, and we will take up the various propositions of law on which the appellants rely.

Specification of Errors.

That the learned court below erred in the following particulars:

1. In holding under said Delaware-Cherokee agreement of April 8, 1867, that the only rights specifically purchased by the Delawares to land in the Cherokee Nation were life estates in 160 acres for each of the 985 Delawares enrolled at the time of said agreement, and in holding that upon the death of each of said enrolled Delawares his or her right to said 160 acres lapsed, and said land fell back into the common domain of the Cherokee Nation.

2. In holding that said agreement of April 8, 1867, was not dependent upon and should not be construed in connection with the Cherokee treaty with the United States, dated July 19, 1866, and the Delaware treaty with the United States, dated July 4, 1866.

3. In holding that the Cherokee Nation was not estopped by its previous admissions, made in other litigations, to the effect that the Delawares obtained by purchase exclusive title to said 157,600 acres of land.

4. In holding that extrinsic evidence could not be considered to aid in the interpretation of said Delaware-Cherokee agreement.

5. In holding that the Delawares had no right to attack the action of the Cherokee Nation since the making of said agreement in admitting various persons as citizens, and conferring property rights upon them as such citizens, thus diminishing the share in the lands and funds of the Cherokee Nation to which the Delawares otherwise would be entitled, and for which they had paid.

6. In holding that the Delawares could not object to wrongful acts upon the part of the Cherokee Nation in the misuse of its funds.

7. In not holding that under said agreement of April 8, 1867, that the Cherokees sold to the *Delaware tribe, as a tribe*, or to the individual Delawares, an aggregate body of land, the extent of which was measured by the product of the number of Delawares on said roll, or 985, by 160 acres for each of said Delawares, or 157,600 acres, and in not holding that said sale conferred upon the Delaware tribe, as a tribe, or on said individual Delawares, the highest title known to Indian law, "title by occupancy," to wit, the same title as theretofore had been owned by said Cherokees; and in not holding that said Delawares, as a tribe, or as individuals, acquired such a title by virtue of said agreement (to wit, "title by occupancy") as continued as long as any member of said tribe survived and occupied said land, irrespective of the deaths from time to time of said registered Delawares.

8. In not holding that, inasmuch as at the time of said agreement the Cherokees, as a Nation, had the right of occupancy as communal owners of said land, which they

had theretofore purchased from the United States, that therefore said sale from said Cherokee Nation to said Delaware tribe vested in said tribe the same title, to wit, the right of occupancy of said lands by said Delaware tribe as communal owners, the highest kind of Indian title known to the law.

9. In not granting the various prayers of the petition, and in not finally fixing the rights of the Delawares in the lands and funds of the Cherokee Nation.

10. In dismissing the petition.

The Issues as Raised by the Pleadings.

Before discussing the opinion, the facts, and the law, we desire briefly to set forth the important allegations of the pleadings which are either admitted or denied.

The action was brought pursuant to the *Curtis act*, section 25, and was begun in the fall of 1898.

The petition (2–19) sets forth fully the claims of the Delawares.

After referring to the Curtis act, the Delaware and the Cherokee treaties of 1866, and the agreement of 1867, the petition states that of the 985 enrolled Delawares referred to in the agreement, *212 only are living*, and 773 have died, leaving descendants. The petition shows that under the agreement the Delawares paid $157,600 and thereby secured whatever rights they had in 157,600 acres. That furthermore, when the agreement was made, there were 15,573 Cherokees, and that in order to purchase the additional rights of citizenship mentioned in said agreement, the Delawares paid the additional sum of $121,824.28 into the Cherokee national fund, whereby the Delawares and their descendants became entitled to share with the Cherokees in the national funds and remaining domain of the Nation.

The petition further states that the Delawares have preserved their tribal organization; have been recognized as a tribe; that there are now 920 Delawares residing in the

Cherokee Nation, who have a business committee, and that the question of their title to the lands referred to is in dispute.

All of these allegations are either admitted or are not denied.

The following allegations are controverted: That the Delawares are owners of said land; that they selected it, and have continued to occupy it; that the land should be awarded to them; that they are also entitled to share with all Cherokees in the remaining lands of the Nation; that various persons have illegally been admitted as citizens of the Cherokee Nation; that such persons should not share in the remaining lands and funds of the Nation; that the Cherokees have squandered large amounts of national funds, in which the Delawares had not benefited, and that the Delawares in sharing in the national funds should not be charged with any part of this waste.

We refer to the petition and answer for a fuller statement of the matters in controversy.

The prayer for judgment consists of seven subdivisions (17–19), and is in effect that the court determine petitioners' rights in said lands, and adjudge that the Delaware Indians are entitled to 157,600 acres, which should be transferred to them; that the court determine that the Delawares are also entitled to share in the remaining lands and funds of the Cherokee Nation; and that all persons illegally admitted as citizens be excluded from such share; that the Nation account for improper distribution of its funds; that the share of the Delawares be not diminished by reason of misappropriation of funds, and that the petitioners have such other relief as may be proper.

The Opinion of the Court Below.

The learned court, after considering the act of Congress of June 28, 1898, conferring jurisdiction of the court, cites extracts from said agreement of April 8, 1867 (521–523),

discusses the different theories of the Delawares and the Cherokees respecting the title to said lands, and holds that the title acquired by the Delawares was not a *fee simple* title, but merely individual life estates in the 985 Registered Delawares. The court, however, fails to consider that the Delawares necessarily obtained by said purchase whatever title the Cherokees had. The Cherokees had bought from the United States a title in themselves as a Nation.

The Delawares were purchasing as a *tribe*, not as individuals, and by this purchase there was vested in the tribe the same right of ownership as the Cherokees had. Any other view would result in an absurdity, for many of the Delawares on the register were old and would speedily die, and a purchase of such life estates would be of little value. If, however, the money which was paid, which was the same amount whether the person on the list was old or an infant, was paid by the tribe as a tribe for the benefit of the tribe, then this aggregate body of land became vested in the tribe as communal owners and inured to the benefit of the tribe as long as either any of the registered Delawares lived or as long as any of their descendants might live and occupy the land.

While the court speaks of the absence of words of inheritance, this is of no importance. Probably the Cherokees did not have a fee simple to grant; the intent, however, was to vest the Delaware tribe (not individual Delawares) with all the title the Cherokee Nation as a nation had.

The court cites the case of the Cherokee Nation vs. Journeycake, 155 U. S. 213, as an authority against the position taken by the Delawares. This case will be discussed more fully subsequently. In construing the Delaware-Cherokee agreement the court ignores the terms of the Cherokee treaty and the Delaware treaty of 1866 above mentioned, and declines to consider extrinsic evidence, basing its decision simply upon the face of the agreement itself. We think this was error.

We have no objection to the position taken in the opinion that the Cherokee lands were vested in the Nation in communal ownership, or that the court must consider the agreement in view of the system of land law then in existence among the Indian tribes.

The court says:

> "At the time the agreement was entered into the citizens of the Cherokee Nation held no other right or interest in the land than the right of occupancy as communal owners."

We think this is correct. We think the court should have gone further and stated that this right of occupancy as communal owners was conferred by the agreement upon the Delaware tribe as a tribe.

The court says:

> "After the agreement was executed and went into effect, there were Cherokees by blood having a right of occupancy, and Cherokees by adoption, the Delawares, having a right of occupancy. The only distinction which can be made between them was that the Cherokees bought their right of occupancy from the United States and the Cherokees by adoption (the Delawares) bought their right of occupancy from the Cherokee Nation."

The court says: "And this is a distinction without a difference."

We think the court is mistaken in this last remark.

After the agreement was signed, the 157,600 acres, which represented the aggregate amount of land purchased by the Delaware tribe, whose *extent* merely was measured by the number of registered Delawares multiplied by 160 acres, this land, we say, although situated within the bounds of the Cherokee Nation, and although not in one compact body, was owned by the Delaware tribe as a tribe, and the Delawares then had the same right of occupancy in communal ownership as the Cherokees previously had to this specific land, prior to the making of the agreement.

By this sale the Cherokee national domain, the land of Cherokee Nation owned in communal ownership, was diminished by 157,600 acres, and as to the *ownership* of this the Delawares were an "Imperium in imperio." The remaining lands of the Cherokee Nation, however, still continued to be owned by the Nation in communal ownership with right of occupancy, and all persons who were Cherokees, either by blood or adoption, had equal rights in said remaining lands.

As the Delawares, in addition to purchasing as a tribe 157,600 acres, also, by paying an additional sum of money, purchased citizenship, they, together with the other Cherokees by blood, acquired rights in the remaining lands.

We think this logically follows from what the court has said and what appears upon the face of the agreement.

We can not understand, therefore, how the court arrived at the conclusion that the agreement merely granted life estates measured by the lives of each registered Delaware as an individual with respect to different parcels of 160 acres of land.

If the right in the Delaware tribe of occupancy in communal ownership of these lands is recognized or affirmed, such an interpretation would not be in derogation of the system of law respecting Indian lands; it would be in harmony with this system.

The court below held specifically that the Cherokee Nation had a right to adopt additional citizens, although this might diminish the share to which the Delawares were entitled in the lands and funds of the Nation. The court also held that, assuming that the Cherokees had wasted a large portion of the national funds, yet, nevertheless, this was a political act and should not be investigated by the court.

That the court below was in error in the particulars stated it will be the province of this brief to demonstrate.

The main error in the view taken by the court below is in

regard to the nature of the title acquired. Here are two independent tribes or nations dealing together, granting and securing tribal rights. The great Cherokee Nation was not dealing with 985 individuals. The agreement shows on its face that the Delaware tribe as a tribe was a party. While the court is right in saying that no words of inheritance are attached to the grant, this is immaterial. If the occupancy of the Delawares was tribal and not individual, the grant will continue as to all of the land granted as long as any members of the tribe remain upon the land. If the Cherokees had a mere title in common, limited to their occupancy, then they gave the Delawares all the title that they had, and the Delawares would be and are in the same position as if they had received a grant from the United States for their occupancy.

It is sufficient for our purposes that the Delawares acquired these lands for their occupancy as a tribe. This would be as complete an Indian title as our laws would recognize if they had had the land, even before the time when the sovereignty of the United States attached to it. This was all the title which the Cherokees had to give them, and they at least got this title and still have it.

POINT I.

The Case of the Cherokee Nation Against Journeycake, 155 U. S. 213, When Properly Interpreted Is Not an Authority Which Impairs the Force of the Position Taken by the Delawares.

We think it wise at the outset to discuss this case, as it has been urged as a bar to the relief which is sought.

The agreement of April 8, 1867, referred to *two* distinct matters: *first* to the purchase of lands, as contemplated in the Delaware treaty of 1866, and *second*, to the question of the purchase of citizenship and the right to participate in the remaining lands and funds of the Nation. These two subjects could well have been handled in separate agree-

ments. The fact that they are both in one agreement does not affect their independent character.

In the Journeycake case the question for decision arose under the *second* portion of the agreement with reference to citizenship rights. The question of the purchase of the 157,600 acres of land was not involved.

The decision of the Court of Claims, 28 C. Cls. R. 281, was affirmed. Hence, any expressions in the opinion of this court with respect to issues not involved are not in point, and whatever was within the jurisdiction of the Court of Claims is necessarily the law, as that decision was *affirmed*.

In the Journeycake case the jurisdiction depended upon the act of October 1, 1890 (26 Stats. p. 636), wherein Congress granted leave to bring a suit with respect to the recovery of moneys only. Naturally the court could consider no other question.

Hence the *first* portion of the Delaware agreement in regard to the purchase of lands was not before the court. The petition in the Journeycake case claimed that the Delawares as members of the Cherokee Nation were entitled to share in the proceeds of sales of Cherokee lands, or in the rentals arising from leasing such lands. The demand was for a money judgment. The cross-bill interposed by the Cherokees had also reference to money demands; there was no issue in regard to the ownership of land at all.

Therefore, it can not be urged that any expression of this court concerning the title to 157,600 acres was called for by the issues or can be deemed an adjudication of the present litigation.

It is a well-known rule of law that where the question of res adjudicata arises and the pleadings do not clearly show the question raised, or there is other doubt or ambiguity, the court then is authorized, in order to ascertain the questions raised and decided, to consider the opinions, the decisions, the briefs of counsel, and often, if necessary, to take other extrinsic evidence. The affirmative is upon the

party asserting that a certain matter was necessarily litigated and decided between the same parties or their privies.

Campbell *vs.* Butts, 3 N. Y. 173.
Doty *vs.* Brown, 4 N. Y. 71.
Dunckel *vs.* Wiles, 11 N. Y. 420.
Stowell *vs.* Chamberlain, 60 N. Y. 272.
Dawley *vs.* Brown, 79 N. Y. 398.
Cromwell *vs.* County of Sac, 94 U. S. 351.
Kerr *vs.* Hays, 35 N. Y. 331.
Patrick *vs.* Shaffer, 94 N. Y. 423.
Clemens *vs.* Clemens, 37 N. Y. 73.
Wells *vs.* Compton, 3 Robinson (La.), 171.

A judgment is only conclusive in respect to the grounds necessarily covered by it, and the law and facts necessary to uphold it.

People *vs.* Johnson, 38 N. Y. 63.
Campbell *vs.* Consalus, 25 N. Y. 613.
Woodgate *vs.* Fleet, 44 N. Y. 1.

A judgment is conclusive only as to facts, without the existence and proof of which it could not have been rendered.

Burlen *vs.* Shannon, 99 Mass. 200.

In the case of Lewis *vs.* O. N. & P. Co., 125 N. Y. 341, 348, Judge Peckham, in the Court of Appeals, New York, used the following language:

> "Where a judgment may have proceeded upon either or any of two or more different and distinct facts, the party desiring to avail himself of the judgment as conclusive evidence upon some particular fact must show affirmatively that it went upon that fact, or else the question is open for a new contention."

See, also,

Bell *vs.* Merrifield, 109 N. Y. 202, 211.
Russell *vs.* Place, 94 U. S. 606.
Cromwell *vs.* County of Sac, 94 U. S. 354.

See, also, the opinion of Judge Earle in Zoeller vs. Riley, 100 N. Y. 102, 107:

> "It is sufficient to say that we can not be certain that there was in that action any adjudication condemning that mortgage, and the burden was upon the defendant to establish that fact."

Hence, when the decision is ambiguous, or is claimed to be, extrinsic evidence can be employed to apprise the court of what was actually decided.

Cromwell vs. County of Sac, 94 U. S. 351.
Davis vs. Brown, 94 U. S. 423.
Campbell vs. Rankin, 99 U. S. 261.
W. A. & G. S. P. Co. vs. Sickels, 24 How. (U. S.) 333.
Walter A. Wood vs. Skinner, 139 U. S. 293.
Miles vs. Caldwell, 2 Wallace, 35.
Bell vs. Merrifield, 109 N. Y. 202.

A court can look at the opinion rendered.

Birchhead et al. vs. Brown et al., 5 Sandf. 134.
Kerr vs. Hays, 35 N. Y. 331.
White vs. Madison, 26 N. Y. 117.

The recollection of the judge who rendered the decision can be utilized for this purpose.

Rider et al. vs. Union India Rubber Co., 4 Bosw. 169, 177.

And finally the court has the right to look at the briefs of counsel.

Burthe vs. Denis, 133 U. S. 514, 522.

In the Journeycake case the Court of Claims elaborately discussed the nature of Indian titles, spoke of the agreement of April 8, 1867, as a treaty, and affirmed the right of the Delawares to share in the national funds. The court held that when any distribution of the public domain or its proceeds was made, that the Delawares had a right to share

in it. The opinion referred solely to the *second* portion of the agreement, and the decree merely announced the rule that the Delawares as Cherokee citizens should share in the distribution of Cherokee funds.

The decree provides that in the distribution of proceeds and avails of the public domain or common property of the Nation, that both the Cherokee Nation and the United States are enjoined—

> "from making any discrimination between Cherokee citizens by Cherokee blood or parentage and Cherokee citizens by Delaware blood or parentage, to the injury or prejudice of the latter."

Evidently this decree is res adjudicata on this point. Evidently the court below in the case at bar should have passed upon the rights of the Delawares to the remaining lands and funds of the Cherokee Nation; should have settled the controversy in this respect at least; *should not have dismissed the bill.* It was the object of Congress that the decree of the Court of Claims should in itself specify the rights of the Delawares, and certainly in the foregoing particulars the court should have fixed their rights, even if, as the court did, it passed adversely on their claim to the land in controversy.

If the Journeycake case had passed on all questions, it would not have been necessary for the present suit to have been authorized, for naturally there would have been nothing further left open for discussion.

These being the facts, naturally any expression of the opinion of this court in the Journeycake case which might have reference to the title to land would not be considered as binding.

Furthermore, the decision of this court in the Journeycake case in no way helps the Cherokees. This court said that the Delawares upon allotment would receive at least an aggregate amount equal to that which they had purchased. This is our contention. We can admit, as was stated by this court, that the Delawares did not acquire a fee title; they

did, however, acquire a title by occupancy in common, which for all practical purposes is just as good.

The decision of an appellate court is not to be judged by its opinion, but by the action taken, or by the decree rendered. A decree of affirmance means that to the extent that the court below adjudicated a fact in issue, that fact is affirmed and nothing more. The rules with respect to dicta are well settled, and this court will enforce them even with respect to its own previous adjudications.

> Cohens *vs.* Virginia, 6 Wheat. 399, opinion by Chief Justice Marshall.

In U. S. *vs.* Joseph, 94 U. S. 614, where the question arose as to what were Indian tribes and as to what was the tenure of certain lands, this court declined to pass on the question of *citizenship* which was not necessarily involved.

Conversely, as the Journeycake case involved the question of citizenship, this court did not pass upon a question not involved, namely, *the title to lands*.

See also on the same subject:

> Carroll *vs.* Carroll's Lessee, 16 How. 286.
>
> Pollock *vs.* Farmers' Loan and Trust Co., 157 U. S. 429–654.

If this court's opinion in the Journeycake case is to be referred to at all, it is evident that portions of it are undoubtedly in accord with the appellants' contention. The court refers to the Delaware-Cherokee agreement as one for the *purchase* of homes and for a *sale* of lands; that under this purchase their estate continued to be communal, but *not in common with the Cherokees*, and that in any allotments this *aggregate* body of land was to be allotted exclusively to the Delawares.

This is our contention: that the Delaware tribe purchased lands in communal ownership for their occupancy, thus carving out of the Cherokee domain a body of lands held by the Delaware tribe in communal ownership, in which the Cherokees had no interest.

Evidently this court understood that the Delawares could occupy until allotment and that afterwards all provisions against transfer were withdrawn and that the Delawares would then own the land in severalty. This court says that the agreement *excluded the Cherokees from any right of property in the Delaware lands*, and that by implication the Delawares were excluded from the lands of the Cherokees *unless there was a provision to the contrary.*

This is very important and is the very point of the whole decision of this court. There *was* a provision to the contrary under which the Delawares got *in addition* rights of property in the balance of the public domain and the public funds.

Evidently the whole question is an open one and we think that this court, upon careful examination, will coincide with the views of the Delawares, especially as the Cherokees in the Journeycake litigation took the unqualified position that the *Delawares were the absolute owners of their lands, free from any control or interference.*

Can a litigant, even though a nation, take inconsistent positions in different litigations? We think this is not to be tolerated.

POINT II.

The Decree Below Must be Reversed in Any Event Because the Court Did Not Exercise Its Jurisdiction and Power of "Determining the Rights of Said Delaware Indians in and to the Lands and Funds of Said (Cherokee) Nation". The Court Merely Dismissed the Petition, Leaving the Delawares no Better Off Than They Were Before the Passage of the Curtis Act.

The jurisdiction of this court to try the issues raised in the pleadings and determine the rights of the parties thereunder is conferred by the last sentence in section 25 of the act of June 28, 1898 (30th United States Statutes at Large, page 495), which provides:

"That the Delaware Indians residing in the Chero-

> kee Nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee Nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said Nation under their contract and agreement with the Cherokee Nation dated April eighth, eighteen hundred and sixty-seven; or the Cherokee Nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States."

The object of the suit brought and of the jurisdiction conferred on the courts to try such suit is clearly expressed in the foregoing extract from the law as being—

> "for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said Nation under their contract and agreement with the Cherokee Nation dated April 8, 1867."

It is evident that the court below should have determined, and this court must determine by a decree, just what are the rights of the Delawares to the lands and funds of the Cherokee Nation. Such a determination can not be had merely by dismissing the petition. Some affirmative action should have been taken. The court below and this court have all powers in law and in equity to determine the questions relating to the reciprocal rights of the Delawares and the Cherokees; not only the title to the 157,600 acres, but also the title of the Delawares to, or their rights in the national lands generally, as well as the national funds of the Cherokees. The question is what lands and what funds are the property of the Delawares, and in what proportion shall they share? To ascertain these facts this court has all necessary power to issue process or to take evidence, if more is needed.

We do not understand that the jurisdiction of this court to do these things is now questioned.

It is quite evident, therefore, that the court below did not exercise its jurisdiction as it should have done. It is impossible, upon examining the decree below, to ascertain what specific lands the Delawares are entitled to, either as a tribe or as individuals, or the specific lands to which the 212 living registered Delawares are entitled, or the specific lands which the remaining Delawares should get. There is no provision showing the amount of land in the Cherokee Nation by acres, or the amount of the Cherokee funds or the proportion in which the Delawares shall share therein. By the dismissal of the petition, the Delawares are no better off, so far as certainty is concerned, than they were before the passage of the Curtis act in 1898.

This enabling statute authorized the bringing of the suit and required the court to make a specific determination. The effect of the enabling act was to take away from every other department of the Government and every other tribunal the question of determination of the respective rights of the Delawares and Cherokees. The enabling act vested such determination entirely in the court below and in this court.

Notwithstanding this, the Court of Claims, instead of making that determination, simply dismissed the petition and left the Delawares as they stood at the beginning.

It is quite evident that even an admission of some rights of the Delawares in the *opinion* below is not a determination, and it was the duty of the court below to determine all the rights of the Delawares, even though some of them were not controverted. As the case stands at present the dismissal of the petition leaves the Delawares without any rights. The Executive Department of the Government can go on and distribute the lands and property in controversy in utter disregard of the rights of the Delawares, for the reason that the only tribunal which has the power to determine them has dismissed the petition so that no determination can be had. If the Secretary of the Interior now dis-

tributes these lands and this property and leaves out the Delawares altogether, they have no *judgment* to which they can appeal for protection.

It therefore remains for this court to do what the Court of Claims refused to do, and to reverse that determination and to determine itself all of the respective rights of the Delawares and the Cherokees, and to embody that determination in the form of a *decree* which will be the basis of the rights and claims of the Delawares before the executive departments of the Government. This court must do this, whether on the general questions involved it agrees or disagrees with the opinion of the Court of Claims.

That opinion is in no sense a decree, is binding upon no one, and however strong it may be in favor of the Delawares upon certain points, it avails them nothing, for there is no decree based upon it. In fact, a dismissal of the petition would seem to be an adjudication *that the Delawares have none of the rights which are referred to in the pleadings.*

It can be contended that the effect of the dismissal of the petition is to give at the most to each present living Delaware—whether one of the original registered Delawares or not—merely the right of a simple Cherokee citizen and nothing more, and that the $157,600 was paid for nothing.

Even the surviving 212 registered Delawares get nothing more, under the judgment of the Court of Claims, than a simple Cherokee gets. The dismissal of the petition leaves them with no rights which they can claim, and leaves the Delawares generally with no rights that they can claim, except at most the simple rights of a Cherokee citizen. It might be contended that the Delawares can not even claim this, because, although they allege that they had rights of citizenship, and although this was *not controverted*, yet, nevertheless, the *whole petition* was dismissed upon the merits.

This being a decree in equity, this court has power to make its own decree and settle the whole subject-matter.

The statute is a remedial one and should be liberally con-

strued, in view of all the surrounding circumstances, the evil which existed and the remedy needed.

Aldridge *vs.* Williams, 3 How. 9.
United States *vs.* Buchannan, 9 Feb. Rep. 689.

If the opinion of the Court of Claims is *sustained*, yet, nevertheless, there should be a decree specifying the location of the lands which the 212 living registered Delawares must receive, and also specifying the location of the other lands which the remaining Delawares receive as Cherokee citizens, and then, too, the decree should specify the amount of the Cherokee national funds and the precise proportion in which all the Delawares share in that fund, and whether they share as individuals or as a tribe.

There was abundance of evidence in the record to enable the court to determine these facts. Full and specific lists of the 157,600 acres of land were filed with the court below to show the portion of the Cherokee domain appropriated by the Delawares and giving their names.

Should this court *disagree* with the court below, it is of course necessary that some decree be passed specifying, first, the location of the 157,600 acres by definite descriptions; second, the location of the additional land owned by the Delawares as a tribe or individuals, and third, the amount of the Cherokee funds and the proportion in which the Delawares as a tribe or individuals must share therein.

In any event the decree of the court below was wrong.

The fact that the Delawares *must* have a *judgment* which specifically defines their rights, and *also* determines the *amount* of land they are to have, with its *specific* boundaries, is *emphasized* when we consider the terms of the so-called Cherokee allotment act, section 23, approved July 1, 1902.

This section of this act reads as follows (the italics being ours):

> "SEC. 23. All Delaware Indians who are members of the Cherokee Nation shall *take lands* and *share in*

the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said commission is ready to begin the allotment of lands of the tribe as herein provided, the commission shall cause to be *segregated* one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, *subject to disposition according to such judgment as may be rendered in said cause;* and said commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. *Said commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder.* Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, *until their rights under said contract are determined by the courts in their suit now pending against the Cherokees,* and said suit shall be advanced on the dockets of said courts and determined at the earliest time practicable."

When this act was passed the present suit had *not* been decided by the Court of Claims. Its opinion was not rendered until February 2, 1903.

The decree of the Court of Claims, dismissing the petition, evidently was in *disregard not only* of the Curtis act, section 25, but also section 23 of the Cherokee allotment act.

It was clearly intended by Congress that the extent of the rights of the Delawares should be *specified in* and adjudged by the decree. They get such rights only as are thus determined Section 23 of the Cherokee allotment act provides that the

share they take in the Cherokee lands and funds is to be "determined by the judgment." When the lands are segregated they are to be "subject to disposition according to *such* judgment as may be rendered in said cause." The Dawes Commission is instructed to allot the disputed lands to the Delawares "in conformity to the terms of the judgment and their individual rights thereunder."

But the Delawares have *no rights at all* according to the judgment below, although the *opinion* concedes certain of their rights to lands and funds, and although certain of their rights as stated in their petition are *not denied* by the answer, the court ignoring these facts took away every right of theirs by this dismissal.

The Dawes Commission now, according to the present decree, can logically claim that the segregated lands should be allotted *not at all* to the *Delawares*, who spent $1,000,000 in improving them, but to members of the Cherokee Nation generally. Not even the rights of the *Registered* Delawares are preserved, though the opinion below concedes these to a limited extent.

This Cherokee allotment act, as well as the Curtis act, were the laws governing the courts when the Court of Claims made its decision. It is very strange, therefore, that the decree did not at least establish and define the rights of the Delawares as conceded in the pleadings and as found by the court.

What judgment can the Delawares point to for protection when the Dawes Commission attempts to allot these segregated lands?

They can point to *no such judgment*, for there is none, and the fruit of the present litigation seems to be that the court has decided that they have *no* rights of *any* kind.

Evidently, therefore, the decree below *must be reversed*, and this court should make its *own decree*, specifying the rights of the Delawares in the lands and funds in controversy. Section 23 of the Cherokee allotment act states that the

rights of the Delawares when the case is appealed shall be ACCORDING TO THE JUDGMENT OF THE "SUPREME COURT."

POINT III.

The Delaware-Cherokee Agreement of April 8, 1867, Must Be Read and Interpreted in the Light of the Cherokee Treaty of July 19, 1866 (14 Stats. 799), and the Delaware Treaty of July 4, 1866 (14 Stats. 793), Both of Which Are Recited and Referred to in Said Agreement, and Both of Which Contemplate the Sale of the Disputed Lands.

The conditions existing when the Curtis act was passed are important. The court should consider the history of the Government's dealings with the Indian tribes, as found in existing treaties and statutes, especially those of 1866 and 1867.

Just after the close of the war the Government began its policy of gathering the Indians in the Indian Territory and of removing tribes thereto, so as to secure for white settlers large areas of valuable lands. The court will remember as a result of various councils with tribes then on the southwestern frontier, treaties were made in 1866, among them a treaty of July 4, 1866, with the Delawares (14 Stats. 793) and a treaty of July 19, 1866, with the Cherokees (14 Stats. 799).

The important provisions of these treaties are set forth below.

From an examination of them in connection with the said agreement, it will appear that the said Cherokee treaty provided for the *sale* of the Cherokee lands to other Indian tribes, and for the settlement of tribes within the nation either as a part of the nation or otherwise.

The Cherokee treaty provided for just what was subsequently done under the Delaware-Cherokee agreement,

and that agreement must be read in the light of the Cherokee treaty.

Furthermore, the treaty with the Delawares provided for the buying for them of land somewhere—land which they should own. That is, the treaty provided for doing for the Delawares just what was done for them by this Delaware-Cherokee agreement, and such agreement must necessarily also be read in the light of the Delaware treaty.

In the said treaty with the Delawares, the following, applicable to this litigation, appears:

1. Delaware Treaty.

"Whereas Congress has by law made it the duty of the President of the United States to provide by treaty for the removal of the Indian tribes from the State of Kansas; and

"Whereas the Delaware Indians have expressed a wish to remove from their present reservation in said State to the Indian country located between the States of Kansas and Texas; and

"Whereas the United States have, by treaties, negotiated with the Choctaws and Chickasaws, with the Creeks and with the Seminoles, Indian tribes residing in said Indian country, acquired the right to locate other Indian tribes within the limits of the same.

. . . . . .

"Article 4. The United States agree to sell to the said Delaware Indians a tract of land ceded to the Government by the Choctaws and Chickasaws, the Creeks or the Seminoles, or which may be ceded by the Cherokees in the Indian country, to be selected by the Delawares in one body in as compact a form as practicable, so as to contain timber, water, agricultural lands, to contain in the aggregate, if the said Delaware Indians shall so desire, a quantity equal to one hundred and sixty (160) acres for each man, woman, and child who shall remove to said country, at the price per acre paid by the United States for the said lands, to be paid

for by the Delawares out of the proceeds of sales of lands in Kansas, heretofore provided for. The said tract of country shall be set off with clearly and permanently marked boundaries by the United States; and also surveyed as public lands are surveyed, when the Delaware council shall so request, when the same may, in whole or in part, be allotted by said council to each member of said tribe residing in said country, said allotment being subject to the approval of the Secretary of the Interior.

"Article 5. The United States guarantee to the said Delawares peaceable possession of their new home herein provided to be selected for them in the Indian country, and protection from hostile Indians and internal strife and civil war, and a full and just participation in any general council or territorial government that may be established for the nations and tribes residing in said Indian country.

. . . . . .

"Article 11. The Delawares acknowledge their dependence upon the United States, and again renew their pledges of devotion to the Government thereof, and ask its protection, and the United States agree to protect, preserve, and defend them in all their just rights.

. . . . . .

"Article 15. It is also agreed by the contracting parties that nothing contained in this treaty shall be so construed as to require the Delawares to remove from their present homes until after they shall have selected and received title to lands for new homes elsewhere."

. . . . . .

In the said Cherokee treaty of July 19, 1866, provision was made for the settlement of friendly tribes of Indians on lands within the Cherokee Nation, as follows:

2. Cherokee Treaty.

"Article 15. The United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied

lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect with native citizens. And should any such tribe, thus settling in said country, decide to preserve their tribal organizations, and to maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee Nation, they shall have a district of country set off for their use by metes and bounds equal to one hundred and sixty acres, if they should so decide, for each man, woman, and child of said tribe, and shall pay for the same into the national fund such price as may be agreed upon by them and the Cherokee Nation, subject to the approval of the President of the United States, and in cases of disagreement the price to be fixed by the President.

"And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country, and thence afterwards they shall enjoy all the rights of native Cherokees. But no Indians who have no tribal organizations, or who shall determine to abandon their tribal organizations, shall be permitted to settle east of the 96° of longitude without the consent of the Cherokee national council, or a delegation duly appointed by it, being first obtained. And no Indians who

have and determine to preserve their tribal organizations shall be permitted to settle, as herein provided, east of the 96° of longitude without such consent being first obtained, unless the President of the United States, after a full hearing of the objections offered by said council or delegation to such settlement, shall determine that the objections are insufficient, in which case he may authorize the settlement of such tribe east of the 96° of longitude."

. . . . . .

3. Delaware-Cherokee Treaty.

In furtherance of the policy of the Government and the agreements contained in the Delaware treaty of 1866, as above quoted, and under the right acquired by the United States under article 15 of the Cherokee treaty, also above quoted, the Delaware Indians entered into an agreement with the Cherokees, as set forth in paragraph 4 of the complainants' petition, by which arrangements were made for the Delawares to remove to and settle in the Cherokee Nation east of the 96 meridian of longitude. This agreement was approved by the Secretary of the Interior and the President, and was therefore indorsed by the United States, standing in the relation of guardian to both contracting parties. The rights of property obtained by the Delawares under this agreement as claimed by them and admitted until recent years by the Cherokees were:

First. Lands in the Cherokee Nation purchased at the price of $1 per acre to the extent of 160 acres for each Delaware whose name appeared on a certain register made February 18, 1867, by the Delaware agent in Kansas, and then on file in the office of the Commissioner of Indian Affairs (268–280). This was a list of Delawares who elected to remove to the Indian country, and for such other persons as might be added to that list with the consent of the Delaware council (the same being Delawares) within one month after the signing of said agreement. These lands were to be

selected by the Delawares in any part of the Cherokee Nation east of said 96th meridian not conflicting with the selections of other persons already in possession. The said register embraced the names of 985 Delawares.

Second. Citizenship in the Cherokee Nation purchased by the Delawares, including the right to participate in the other communal property in the Cherokee Nation in the ratio of 1 Delaware to 13.78 Cherokee citizens.

Third. The admission of all descendants of registered Delawares, born after the agreement, to rights of citizenship in the Cherokee Nation, including the right to participate per capita with the other Cherokee citizens in any division or distribution of the communal property of the Cherekee Nation.

4. THE DELAWARES ACQUIRED TRIBAL RIGHTS.

It Should be Observed That This Agreement of April 8, 1867, at the Outset (5) Refers to Said 15th Article of the Cherokee Treaty and the Said Delaware Treaty, and Naturally in Construing the Agreement it Must be Assumed That the Agreement Was Made by Virtue of Such Treaties and to Carry Out the Policy Indicated in Them.

On the subject of the purchase of lands the agreement states that the Cherokees—

> "agree to sell to the DELAWARES for their OCCUPANCY a quantity of land . . . *in the aggregate* equal to 160 acres for each individual of the Delaware *tribe*"

upon the said register (5).

This is not a sale to individuals but a sale to the Delaware tribe of title by occupancy in common. This is not a sale of separate tracts of 160 acres each, but of an aggregate

quantity of land measured by the number of persons on the register at the rate of 160 acres each.

The agreement provides—

> "in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the *aggregate* amount of land herein provided for the Delawares (the tribe and not individuals) to include their improvements . . . shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation" (5).

This is a guarantee, not of specific lots, but of an aggregate body of land.

Restrictions upon alienation were set forth for the reason that no Indian was allowed to transfer his holding to outsiders, the lands being common property (6).

The agreement provides that the tribe as a tribe shall pay $1 an acre, according to this basis, for all land taken. This was a tribal payment made to secure a joint ownership of an aggregate body of land (6).

Thereafter as an independent matter (6) the Delawares agreed to pay a separate sum of money based upon the relative value of national funds and number of Delawares and Cherokees, for the purpose of getting something *additional*, namely, citizenship, and the right to share in the additional lands and funds of the nation.

This payment was likewise a joint payment by the tribe from its tribal funds and secured tribal rights.

Finally, the descendants of such registered Delawares were granted also rights of citizenship (7).

It is quite evident, then, that the only function of the registered list was first as a measure of the quantity of land which the tribe should secure by an appropriation of tribal funds; second, as a census report, which would fix for the time being persons who were the existing members of the Delaware tribe, the persons who then become Cherokee

citizens, and the persons whose descendants should be deemed to be thereafter Cherokee citizens.

It was essential to know how many members of the tribe then existed, because upon their number depended the quantity of land which the tribe should get. Under the second portion of the agreement it was likewise essential to know how many persons might become citizens, and *under the last portion of the agreement it was essential to know how many persons were entitled to consider that their descendants should become, upon birth, citizens of the Cherokee Nation.*

The list does not indicate that the Cherokee Nation made separate contracts for the sale of land or life estates with each of the registered Delawares. This would be absurd as nation was acting with nation. The list was only useful or proper for the foregoing reasons.

As we have shown, the Delaware-Cherokee agreement provides for two things, citizenship and for a sale of land at a definite price.

Land means land, not a life estate in land. As will be seen, some Delawares were dead when the title passed, so that a life estate was valueless; some were fast approaching death, so that a life estate was of little value.

Valuation to land is more or less fixed. There is no valuation to a life estate, the valuation depending altogether upon the life involved. The evidence shows that $1 an acre was the full value of the land; but this price would have been excessive as the price for a life estate merely. The evidence shows also what both parties had in contemplation was land in the ordinary acceptance of the term, not life estates in land.

Hence, the Court of Claims was clearly wrong in holding that what the Delawares acquired was simply life estates in the land for the living Registered Delawares. Our claim is that the Delawares took what title the Cherokees had in the 157,600 acres. The title of the Cherokees was not an absolute indefeasible estate in fee under the deed by which they

held their title. There was a reversion to the United States in case the Cherokees moved away, and they could not sell without the consent of the United States. The same limitation of course applies to the Delawares' title. This is what the words "for their occupancy" mean. The Cherokee title was held "for their occupancy;" that is, the Cherokees must occupy the land and must not sell it, and the expression "for their occupancy" in the Delaware-Cherokee agreement means the same thing with respect to the Delaware lands; that is, the Cherokees were limiting the Delawares by the same limitation, and no other, under which they themselves held their title, and it is our claim that the Delawares took as a tribe and preserved their tribal organization.

This Interpretation (Title in the Delaware Tribe as a Tribe) Is, However, Not Necessary for our Recovery.

The Cherokee Nation necessarily sold and finally parted with whatever title it had to the lands in question, and it makes no difference whether the Delawares acquired their title as a tribe or whether or not the title vested in the 985 Delawares as individuals.

If the Delawares took as individuals, we claim that they took an inheritable title, and that this amounted to the same thing as though they took it as a tribe. If the tribe took the title, then the tribe will divide the lands among themselves; if individuals took the title, then they and their heirs and descendants are entitled to these lands now.

Even if the construction of the agreement is that the 985 Delawares took a title in no land, but were simply guaranteed 160 acres apiece upon a division, yet they still would be entitled to recover, for *there are now more living Delawares than would take up the whole 157,600 acres at 160 acres apiece.*

The construction of the agreement limiting the 160 acres to each of the Delawares now living who were upon the old register would be absurd. We can not contemplate that

these Delawares in 1867 were so selfish as to provide beyond peradventure that they themselves should have 160 acres apiece without making similar provision for their descendants. The one thing that the Indian is noted for is his loyalty to the next generation, to those who are to come after him. No Indian was ever known to betray his race or his descendants for personal profit to himself. To claim that the Delawares were making this bargain which has been called a sharp bargain, without providing that their descendants might participate in it in any degree, would be the height of absurdity. The money which paid for the 157,600 acres was tribal money. The Delawares certainly would not, nor would the United States Government have allowed them to do so if they would, have used tribal money to procure an advantage for the living members of the tribe, which the members who were to come after them could not share in.

If it be said that the members subsequently born were to have simply the rights of Cherokees it does not help the argument in any way. The Delawares were providing for something more than simple Cherokee rights and were *paying* for something more. They bought Cherokee rights by the last provisions of the agreement. By the first provisions they paid $157,600 for something in addition to simple Cherokee rights—either the land itself or for some greater rights in the land than the mere Cherokee citizen had. It can not be presumed that they were securing these additional rights for their own benefit and were deliberately excluding their children from participating in them.

It therefore seems clear:

1. That the Cherokees parted with all their title to the disputed lands.

2. That the Delawares took these lands as a tribe, free from reversion in the Cherokees; or

3. Took the land as individuals, with rights of inheritance in their issue; or

4. Were guaranteed that upon an allotment there should be divided among the Delawares at least 160 acres for at least 985 Delawares, and as there are now more than this number of Delawares, they certainly get the 157,600 acres.

If the individual Delawares took title, the 212 registered Delawares now living take as grantees, and the remaining Delawares take as heirs of the deceased registered Delawares.

The foregoing are some of the facts and a portion of the history of the Delawares which caused Congress to pass the enabling act.

It is apparent from a consideration of the said treaties and the said agreement that the Delawares secured a title to these lands which can never revert to the Cherokees, in addition to securing rights of citizenship and what grows therefrom.

We have stated in this point somewhat in full our construction of the said treaties and said agreement, and a general synopsis of the argument (which will be referred to in the succeeding points somewhat more in detail), in order that the court may at the outset be impressed with the phraseology of these documents, and may understand what are the real points in controversy.

POINT IV.

The Complainants are Properly in Court.

We do not understand that the point will be raised as to any defect of parties plaintiff, or as to the capacity of the plaintiffs to sue. However, a few words on this subject may be important. The statute, section 25, of the Curtis act authorizes "The Delaware Indians residing in the Cherokee Nation" to sue. The *record* will show that they consisted of men, women, and children, young and old, some 1,080 in all, only 212 of whom are living Registered Delawares.

Among the plaintiffs are the business committee of the Delawares as such committee and individuals, and other individual Delawares, who sue on their own behalf and on behalf of children and descendants of Registered Delawares.

It is proper that all persons concerned should be represented as parties, but it would be cumbersome to mention the names of all the living Delawares.

If it be contended that the Delawares do not exist as a tribe, this contention will have no merit. The Delawares have since their admission to the Cherokee Nation preserved their tribal organization, their form of government; they had their separate communal interests, and have dealt with the United States through their own officers, independently of the Cherokee Nation. This is substantiated by evidence in the record of Simon Secondyne (38, 37), of John Bullette (42, 43, 45), of John Willson (49), of Mary E. Armstrong (58), of Mary C. Beysiau (66, 67), of Henry Armstrong (72), of Stephen Miller (76), of William Adams (81).

The Delawares as a tribe or nation made their own improvements, built their own churches and their own school houses, and erected their homes out of their funds. Simon Secondyne (37), Stephen Miller (76), William Adams (81–82).

The Delawares were a tribe when they entered into this agreement; they entered into it as a tribe for tribal purposes. After the execution of the agreement they kept up their tribal organization and their communal rights, and they are properly in court, both as a tribe and as individuals. Now that the time for allotting land has come, they desire that these lands be awarded them as a tribe so that they can distribute them among their various members.

There can be no claim that the Delawares did not maintain their tribal organization. It will appear from the record and the files of the departments of the Government that they had tribal funds invested with the Government amounting to nearly one million dollars, after they had paid the

Cherokees the money agreed upon for the purchase of lands and citizenship, which fund was held by the Government until 1891 and 1893, when it was distributed per capita among the Delawares, with the understanding that the money should be used in the improvement of their homes. Between 1867 and 1893 the Delawares received semiannual payments and interest upon this fund.

The Government dealt with them as a tribe with respect to their tribal funds and property.

POINT V.

The Delaware and Cherokee Treaties of 1866, in Connection with the Delaware-Cherokee Agreement of 1867, Show Upon Their Face, Without the Aid of Parol Evidence, That the Delawares as a Tribe Purchased from the Cherokee Nation an Aggregate Quantity of 157,600 Acres of Land to be Occupied by the Delaware Tribe in Communal Ownership and to Remain as the Property of Such Tribe Not Only as Long as Any Registered Delaware Should Survive, But Also as Long as Any Descendant of Such Registered Delaware Should Exist and as Long as the Tribe Should Continue to Occupy and Improve Such Lands, Their Title Being the Same Title by Occupany as Was Theretofore Owned by the Cherokee Nation Which Granted These Lands.

In the discussion of this proposition it will be useful to divide the argument under various heads, all of which tend to the demonstration of the proposition which is at the head of this point.

POINT V—SUBDIVISION A.

Proper Construction of the Delaware and Cherokee Treaties and the Delaware-Cherokee Agreements.

We have already in a preceding point quoted from the Cherokee treaty of 1866, the Delaware treaty of 1866, and the said agreement of purchase. It will be observed that the Cherokee treaty provided that where a tribe should remove and preserve its tribal organization it should have—

> "a district of country set out for their use by metes and bounds equal to 160 acres if they should so decide, for each man, woman and child of such tribe,"

and thus was provided a measure to ascertain the quantity of land which the tribe should secure; hence the necessity of the register provided for in the Delaware-Cherokee agreement.

In the Delaware treaty the United States proposed to *sell* to the Delawares a tract of land to be selected in a compact form. This body of land was to be equal to 160 acres for each Delaware, and land was to be surveyed and finally allotted.

The fact that in the agreement when signed the land was not in compact form makes no difference. The purpose of both treaties was that whatever land should be sold should belong to the tribe as a tribe. In fact, the Delaware treaty provided that the Delawares need not remove from Kansas until they shall have "selected and received title to lands for new homes elsewhere."

These treaties provide for an adequate scheme of removal. The method of fixing the amount of land was settled. There was to be a particular amount of it, depending upon the

numbers of Delawares on the list. The Delawares, as a whole, should get title, and they were to pay from their tribal funds, according to the number of acres they got by this methed.

It can not be supposed that these fundamental provisions of these treaties were intended to be abrogated when the agreement itself was made. The title which the Delawares were to get necessarily was only such title as could be conferred by the Indian tribe which proposed to sell. It had to be a title by occupancy. Individual Delawares were not authorized to contract; the action was a tribal action on both sides.

Now, when we come to consider the agreement of purchase which refers to these treaties, we observe that the Cherokees agreed to sell to the Delawares for their *occupancy*. In other words, they agreed to give what title the Cherokees had, and the same title, the highest kind of an Indian title. The agreement did not state that each Delaware was to get a separate tract, but that the *Delawares* were to get a *quantity* of land, which quantity was to be measured by the product of 985 by 160. The lands were spoken of as purchased, and not only occupancy, but ownership was guaranteed. The lands were to be paid for. The agreement was tripartite between the two tribes and approved by the United States. It only had force or virtue by reason of the previous treaties of 1866, and in interpreting the agreement we necessarily must incorporate, so far as is possible, the terms of the previous treaties. The agreement was not intended to grant a less title than the Cherokees had. It was not intended that the Cherokees should merely part with a life interest and retain the reversion. It was intended that the Cherokees should sell whatever they had and part with the land once for all.

Upon the face of these documents, in view of the history of the times, it is quite evident that the construction made by the court below is not well founded.

It is proper to consider also the circumstances surround-

ing the making of these treaties and this agreement. We will later on discuss the evidence submitted to show that the Delawares understood the treaty to mean precisely what we say it means on its face, that is to say:

1. The Cherokees sold to the Delawares this body of land as a whole to be selected by individual members in different locations, not to interfere with Cherokee selections, the lands to be the exclusive property of the Delaware tribe, subject to the jurisdiction of the Cherokee government for government purposes, with the necessary restrictions against alienation, which was a part of the Government's policy in dealing with the Indians.

2. When the Delawares as a tribe paid from their tribal funds certain other moneys, then the registered Delawares and their descendants obtained additional rights of citizenship and additional rights in the other lands and funds of the Nation.

When the public history of the times is considered in connection with the language of the agreement and the testimony of witnesses, it will be observed that the evidence is precisely in line with what these documents show upon their face, and this court is authorized, in view of the language of these treaties and the other facts mentioned, to consider this evidence.

This agreement is by the Cherokee Nation to a Delaware tribe, and it may be called a public grant.

The general rule of construction of deeds of grant is that the language is to be construed strictly against the grantor and in favor of the grantee. This rule does not apply to public grants, in which case the construction is in favor of the State, except when the grant is based on a consideration moving from the grantee, when the general rule applies as between private parties and the construction must be strictly in favor of the grantee.

Bridge *vs.* Bridge, 7 Pick. (Mass.), 344.
Same, 11 Pet. (U. S.), 591.
Langdon *vs.* New York, 93 N. Y. 129.

In this case there was an adequate valuable consideration moving from the Delawares, the grantees, to the Cherokee Nation, the grantor.

> "In construing a statute, courts may refer to the history of the times to ascertain the reason for and the meaning of its terms."
>
> United States *vs.* Union Pacific Railroad, 91 U. S. 72.
>
> Aldridge *vs.* Williams, 3 How. 9.
>
> District of Columbia *vs.* Washington Market Co., 108 U. S. 243.
>
> Kalzenberger *vs.* Aberdeen, 16 Fed. Rep. 745.

> "In construing statutes the state of things as they appeared to the legislature at the time of enactment may be considered."
>
> Platt *vs.* Northern Pacific Railroad Co., 99 U. S. 48.

> "A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter, and a thing which is within the letter of a statute is not within the statute unless it be within the intention of the makers; and such construction ought to be put upon it as does not suffer it to be eluded."
>
> People *vs.* Utica Ins. Co., 15 Johns, 358.

Much help in the interpretation of the Delaware-Cherokee agreement will be gained by looking into the history of the times preceding, during, and subsequent to the making of the agreement. It is a fact of which the court will take notice that the General Government soon after the Civil War adopted the policy of acquiring from the five civilized tribes, who owned all the lands in the Indian Territory, a part of said lands for the purpose of collecting in that Territory all the Indians in the United States friendly to each other. For this purpose treaties had been completed with

the Choctaw, Chickasaw, Creek, and Seminole Nations, by which cessions of a part of their possessions had been made to the United States for the purpose of settling friendly Indians thereon, when on July 4, 1866, the treaty with the Delawares providing for their removal to the Indian Territory was agreed on, and a treaty with the Cherokees was being negotiated which, it was contemplated, would contain a cession of lands for the purpose of settling friendly Indians thereon, similar to those contained in the treaties with the other tribes.

The Delawares had sent delegations to the Territory and they had examined several tracts of country that were subject under the treaties with the five civilized tribes to settlement or purchase by friendly Indians.

In the Cherokee treaty of July 19, 1866, there was no cession of lands, but by article 15 the United States was given the privilege of settling any civilized Indians friendly with the Cherokees and the adjacent tribes within the Cherokee country east of the ninety-sixth meridian of longitude, on such terms as might be agreed upon between the Indians so settling and the Cherokees, with the approval of the President, such terms, however, to be consistent with certain general provisions which are an important factor in the interpretation of the Delaware-Cherokee agreement, which it must be presumed was drawn to be consistent therewith, and it is highly proper at this time to give them careful consideration.

There were two plans outlined:

1. For the settlement of Indians who would abandon their own tribal organization and become citizens of the nation; and—

2. For the settlement of Indians who wished to preserve their tribal organization, and maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee Nation, and also enjoy all the rights of native Cherokees.

As to the first class, it is provided that the terms of their settlement must contain a provision for the payment into the Cherokee national fund of a certain sum of money—

> "which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country."

When this is done, the Indians so paying—

> "shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect with the native citizens."

Where the Indians settling desired to preserve their tribal organization and maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee Nation, the terms on which they were to settle must contain provision for the setting off to them of a district of country equal to 160 acres of land for each man, woman, and child, if desired, to be paid for by them at a price to be agreed on or to be fixed by the President, and *also* a provision for the payment by them into the national fund of a sum of money—

> "to be agreed on by the respective parties, not greater in proportion to the whole existing national fund, and the probable proceeds of the lands herein ceded or authorized to be ceded or sold, than their numbers bear to the whole number of Cherokees then residing in said country (after which) they shall enjoy all the rights and immunities of native Cherokees."

In the one case the Indians were to purchase the rights of citizenship simply, which gave them only the same rights of property enjoyed by the native citizens; while in the other case, the Indians acquired these rights of citizenship, and in addition purchased land to be held in their own right. *This is what the Delawares did.*

This treaty with the Cherokees and the treaty of July 4, 1866, with the Delawares, must be considered in connection with the Delaware-Cherokee agreement, as these two treaties were the law of the land relating to the subject-matter, and would have been a part of the agreement even if they had not been referred to therein and thus made a part.

The stipulations of the Delaware treaty of 1866 have therefore an important bearing on the subject and should be carefully considered.

It will be seen that the scheme of removal of the Delawares contemplated, as provided in article 4, the sale by the United States to the Delawares of a part of the lands that the Government had purchased from the Creeks, Seminoles, and Choctaws, and Chickasaws, or expected to purchase from the Cherokees.

From an examination of the provisions of this treaty, it appears that the Delawares approached the subject of selecting and purchasing their new homes with no other understanding or purpose than that the lands so selected and purchased by them would belong to them free from any rights of property in any other Indian tribe or nation, or in the United States. The Cherokees likewise understood when they agreed to sell lands to the Delawares that they parted with their rights of property in the lands sold. The Delawares reserved the right to and have preserved their separate tribal organization, and have maintained their tribal laws, usages, and customs not inconsistent with the constitution and laws of the Cherokee Nation.

By the Cherokee treaty Indians who became citizens and abandoned their separate tribal organizations were to be required to pay a sum of money which should sustain the same proportion to the then existing national fund that the number of Indians sustained to the whole number of Cherokees then residing in the Cherokee country. But the tribe which reserved the right of preserving their tribal

organization, and which purchased land from the Cherokees, was to—

> "pay into the national fund a sum of money, to be agreed on by the respective parties, *not greater* in proportion to the whole existing national fund *and the probable proceeds of the lands herein ceded or authorized to be ceded or sold* than their numbers bear to the whole number of Cherokees then residing in said country."

In both instances, however, the consideration for the payments into the national fund was "all the rights of native Cherokees."

Where the Indians preserved their tribal organization they were to purchase lands in sole and separate ownership, paying therefor such price as might be agreed on by them and the Cherokees, or fixed by the President in case of disagreement. The purchase of such lands was to be a transaction *separate and distinct* from the purchase of the rights of citizenship, which carried with it "all the rights of native Cherokees."

The difference between the rights of the two classes is illustrated by a comparison of the provisions of the agreement between the Cherokees and the Shawnees, by which the latter agreed to abandon their tribal organization, and became citizens of the nation (this agreement is in complainant's Exhibit S, at page 403 thereof, a book filed in the court below but not fully printed on appeal), with the provisions of the Delaware-Cherokee agreement, which are directly before the court in this suit for interpretation. By this agreement with the Shawnees it was provided that certain annual sums payable to the Shawnees, amounting to $5,000, and arising under the Shawnee treaties of 1795, 1817, and 1854, should thereafter be paid to the Cherokee Nation and become the annuities and interests and investments of said nation. It was also provided that as soon as the United States received the sum of

$50,000 from the sale of the Shawnee lands in Kansas, said sum should be paid to the Cherokees. And it was further provided "that the said Shawnees shall abandon their tribal organization."

The grant to the Shawnees is expressed in this agreement, as follows:

> "And it is further agreed by the parties hereto, that in consideration of the said payments and acts agreed upon, as hereinbefore stated, the said Cherokees will receive the said Shawnees . . . into the country of the said Cherokees, upon unoccupied lands east of the 96°, and that the said Shawnees shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect, and with all the privileges and immunities of native citizens of the Cherokee Nation."

Quite a different arrangement was agreed upon between the Delawares and Cherokees (Rec. p. 286 et seq.). In the first place the agreement between them contains no stipulation for the abandonment of tribal organization by the Delawares. Then again, the Cherokees agree to sell to the Delawares 160 acres of land for each man, woman, and child whose name appeared on a certain register referred to and described. This land was to be selected by the Delawares in any part of the Nation east of the 96th degree, not to interfere with the lands selected by other citizens of the Nation as their homes. The continued ownership and occupancy of the lands thus purchased it is provided shall not be interfered with in any manner whatever without their consent. A very significant proviso to the agreement then follows. It is significant as showing what title it was intended that the Delawares should receive to the lands they purchased. This proviso is as follows:

> "*Provided*, that nothing herein shall confer the right to alienate, convey, or dispose of any such

lands, except in accordance with the constitution and laws of said Cherokee Nation."

Unless it had been intended that the lands should become the *property* of the Delawares, free from any right of property in the Cherokee Nation or the Cherokees, this proviso would not have been necessary, and it is not to be presumed that the parties negotiating the sale would have used the words of restriction without some reason. If such a provision had not been inserted the Delawares might have brought in other persons who would not be subject to the jurisdiction of the Cherokee Nation, but notwithstanding that, would have property rights in the lands within the exterior boundaries of the Nation.

Another significant provision is the guaranty of the "aggregate *amount* of land herein provided for the Delawares" in case the Cherokee lands should hereafter be allotted in severalty. This provision evidently was intended to mean that no matter how populous the Cherokee Nation should in the future become, the Delawares should always have their 157,600 acres of land, as well as their other rights in other lands and funds of the Cherokee Nation.

These are the principal features of that part of the agreement which has relation to the purchase of lands by the Delawares, and if the agreement contained no other provisions relating to citizenship there can be no doubt that the Delaware Indians would be held to have bought the land outright, with the condition against alienation, which had the effect only of making the lands thus purchased remain a part of the Cherokee Nation for purposes of government. *This part of the agreement is as distinct and separate from the part providing for the purchase of rights of citizenship as it would have been if contained in a separate instrument*, and the rights acquired by the Delawares thereunder are not in any wise modified, abridged, or curtailed by the rights acquired by the provision under which they secured the privileges and immunities of native Cherokees.

In fulfillment of the conditions imposed on the Delawares by the provisions for the purchase of lands by them from the Cherokee Nation, the Secretary of the Interior paid to the Cherokee Nation out of the funds of the Delawares on May 13, 1869, the sum of $157,600, being $1 per acre for 157,600 acres, which was the aggregate amount of lands purchased for 985 Delawares at 160 acres apiece (Rec. p. 433). On this payment the land transaction was complete and the Delawares became entitled to that amount of land. It was not susceptible of identification, however, until within the past few years—after the Cherokee Nation was surveyed by the Government—and the Delawares have not been able to point out the exact 157,600 acres they had selected until after this suit began.

These lands have been identified, as shown by the deposition of Horace M. Adams (Rec. pp. 338–390) and complainant's exhibits BB to FFFFF, inclusive, and the court is asked to give judgment therefor as identified.

The *other* part of the Delaware agreement provides for the purchase by the Delawares of all the "rights of native Cherokees." This is no more dependent upon the purchase of lands than is the purchase of lands dependent on the purchase of citizenship. They agreed to pay and did pay into the Cherokee national fund (including the probable proceeds of the lands ceded or authorized to be ceded) a sum of money which sustained the same proportion to said national fund as the Delawares sustained to all the Cherokees, or about $123 per capita. For this payment the Cherokees agreed that they should—

> "become members of the Cherokee Nation, with the same rights and immunities, and the same participation (and no other) in the national fund, as native Cherokees, save as hereinbefore provided."

This grant analyzed, would, as it is punctuated, read—

> "shall become members of the Cherokee Nation, with the same rights and immunities as native Cherokees,

save as hereinbefore provided, and with the same participation (and no other) in the national funds as native Cherokees."

Thus analyzed, there can be but one conclusion, and that is, the Delawares' rights and immunities are the same as the native Cherokees, except that in addition to a right to an allotment as a Cherokee he would also have the right as a Delaware to share in the 157,600 acres which the Delawares had purchased and in which the Cherokees could not and did not claim any rights of property.

When we take into consideration the provisions of the Delaware treaty of 1866, providing for the removal of the Delawares, and especially articles 4, 5, 11, and 15; the provisions of article 15 of the Cherokee treaty of 1866, by which the Cherokees agreed to admit other tribes of friendly Indians within their home tract, on one or two plans hereinbefore recited; the Shawnee agreement whereby these Indians became citizens of the Cherokee Nation and agreed to abandon their tribal organization; and the Delaware agreement which makes the provisions of the two treaties referred to a part thereof by reference, it will be seen that the construction placed on the agreement by the contracting parties, as testified to by the witnesses introduced by the complainants, was well founded and in harmony with the language used in the agreement.

It will be seen, also, that the Delawares had bought 157,600 acres of land to be owned by them in their own right, and also all the rights of native Cherokees, both in the lands other than said 157,600 acres, and the moneys of the nation. This construction of the agreement is not weakened by the fact that the Delawares were forbidden to sell the lands "except in accordance with the constitution and laws of the Cherokee Nation."

It has been well held that limitations of the power of alienation where Indian tribes are concerned do not take away from the character of the title. They are useful and

necessary conditions to prevent white settlers and others from taking possession of Indian lands when they are under no obligation to obey Indian constitutions or laws. The idea is to prevent a sale by Indians until the time comes when the lands can be allotted, at which time the occupancy title in the tribe as a whole is changed to the fee title in the several members of the tribe in severalty.

See Pickering *vs.* Lomax, 145 U. S. 313, 120 Ill. 289.
Smith *vs.* Henry, 41 Fed. Rep. 705.
Libbey *vs.* Clark, 118 U. S. 250.
Ross *vs.* Eells, 56 Fed. Rep. 855.

The clause in the agreement, therefore, which restricts the Delawares from selling the lands purchased, except in accordance with the constitution and laws of the Cherokee Nation, does not deprive the title obtained by the Delawares of its character as an Indian title of occupancy, as will be seen by what the courts have held touching such restrictions. This restriction, it is to be observed, is not coupled in any way with any provision of forfeiture, and this also would show that it was not intended by the Indians, parties to the agreement, that these lands should, under any circumstances, revert to the Cherokee Nation. It would follow, therefore, that even if the Delawares did sell or convey these lands in a manner otherwise than in accordance with the constitution and laws of the Cherokee Nation, no forfeiture to the Cherokee Nation would be worked by such action on their part. The fact is clearly shown by the record and the language used in the agreement that the intention of the contracting parties was that the Delawares would acquire all the property in the lands sold to them, and the condition against alienating could not, therefore, be referred to to defeat their title and reinvest it in the Cherokee Nation, even if that condition be violated.

Nor is this construction weakened by the fact that the agreement contains no provision for the issuing of a patent

or deed to the Delawares as an evidence of their title, or as conveying said title to them, for it was held in Harris *vs.* Doe, 4 Blackf. (Ind.) 370, that—

> "a treaty with the Indians so far as respects the grants of land to individuals contained in it, is evidence of the grantees' title, and as such proper to be laid before a jury."

In Verden *vs.* Coleman, 4 Ind. 457, it was held that—

> "where the act or treaty provides no other mode of conveyance, the courts incline by construction to make the terms of the act of treaty operate as grants, where the language, taken altogether in connection with what may be supposed to have been the intention, will admit it."

POINT V.—SUBDIVISION B.

The Word "Occupancy" in the Agreement of 1867 Was Intended as a Designation of the Highest Kind of Indian Title or as a Description of the Purpose for Which the Lands Were Sold, and Was Not Intended as a Limitation Upon the Title Granted.

The agreement states that the sale is made to the Delawares *for their occupancy*. This is by no means a limitation of the title. At the time it was desired by the Government and the Cherokees that the Delawares should not only remove, but should *occupy* the lands they were buying. The State of Kansas was clamorous for the removal of all Indians retaining tribal organizations. The lands were the best in the State. White settlers insisted upon occupying them. The United States desired that the Delawares should remove.

On the other hand, the Cherokees desired that whoever removed to their lands should also *live* there. The Cherokees did not wish to sell land within their jurisdiction to anyone except to such persons as would actually occupy it and im-

prove it; to such persons as would be within the jurisdiction of the laws of the Nation.

Should these lands be sold to the Delawares outright for some purpose other than occupancy, the Delawares might live outside the Nation and might sell to persons obnoxious to the Cherokees, and who, while having property rights, would not be subject to the control of the Cherokee National Government. It was therefore expressly stated that the sale was for actual occupancy. Then, too, the word "occupancy" is most appropriate to describe the Indian title to lands, and evidently referred to the title which the Cherokees themselves held.

It is difficult to understand how this word "occupancy" can be construed to mean merely a life estate in individual Delawares; the individuals were not contracting, the two nations were. It would be contrary to all justice and reason to hold that an Indian tribe which, by virture of treaties, secures a reservation for its occupancy, would lose lands as soon as the members of the tribe, existing at the time, should die.

The word "occupancy" is always used in an Indian treaty as a *technical* term, and secures to the tribe as a whole an Indian title which lasts as long as the tribe exists, and can only be extinguished by some other treaty. *The right of occupaucy to an Indian reservation is recognized as belonging to Indians of the tribe born after the treaty as well as those living at the time of the treaty.*

If stress is laid by the defendants upon the word "occupancy" it does not help defendants, for the result would be that an occupancy title having passed, it necessarily extended to all the 157,600 acres, and the defendant Nation can not claim any of these lands at least as long as any members of the Delaware tribe exist.

In considering the question of a life estate and the question of the meaning of the words "for their occupancy" it should be remembered that if the Delawares had only

bought *citizenship*, each Delaware could have had a *life estate* in as large a tract of land as each Delaware could have improved, and could have kept other people a quarter of a mile away from his improvements, and these improvements upon the death of each Delaware would have descended to his heirs at law under the authority of the Cherokee constitution and laws. This is true, considering each Delaware merely as a Cherokee citizen.

Then why should it be claimed that the Delawares upon paying an additional sum for something *more* than citizenship merely acquired just what they got by paying for citizenship alone?

The Shawnees acquired life estates by merely paying for citizenship. Does it not seem absurd, then, that the Delawares should pay this large sum of money, $157,600, for a privilege that they had already acquired under the second half of the agreement itself?

There is no force in the said arguments of the respondent with respect to the word "occupancy." As was said by Chief Justice Marshall, in Cherokee Nation *vs* Georgia, 5 Peters, 1, the Indians of all tribes hold their lands jointly by "title by occupancy." This is an aboriginal right, not to be terminated at will or by the caprice of government, but only by reason of negotiations or treaties. This right of occupancy is the highest title which the Indians understood they had, and when they got such a title they always secured full and complete rights to use and enjoy the land, which lasted as long as there was a living member of the tribe.

POINT V.—SUBDIVISION C.

Words of Perpetuity are Not Necessary to the Vesting of Title in the Delawares to the Lands They Claim.

It is true that the agreement does not refer to heirs or assigns. The agreement is not a deed or a patent; it is a treaty whereby the Cherokees parted with their title; a

treaty between two independent nations dealing in their corporate capacity. A nation can not have heirs or assigns. The Delaware Nation or tribe can have no heirs.

In United States *vs.* Reese, 5 Dill, 405, it was stated as follows:

> "At the common law, by a rule which in this country is purely technical, the word 'heirs' is necessary in a fee simple grant, but this rule did not apply to grants to a corporation aggregate, and the Cherokee Nation may be regarded under the law as a corporation aggregate."

If a mere life estate was intended, words of purchase and sale would not have been used. The provisions would merely have been for a *settlement* upon the lands.

Naturally, the grant was not made to the Delawares or their assigns; such a grant would not have been of any force, for under the laws of the United States, section 2116 R. S., an Indian tribe was prohibited from selling its lands unless the sale was authorized or made by a treaty or convention, and this same section prohibited all persons not employed under the authority of the United States from attempting to negotiate such treaty directly or indirectly, or from attempting to treat with Indian tribes for the title or purchase of lands. These are general prohibitions.

Therefore the character of *title* of Indian tribes in lands did not affect their right to sell them. The United States were a party to the Delaware agreement, and as it was against the policy of the Government to allow Indian tribes to sell their lands, the absence of any words in the agreement which would indicate a right in the *assigns* of the Delawares is not significant.

Our claim is, and it should be carefully remembered, that the Cherokees did not sell 160 acres to each of 985 individuals, but sold to the Nation or tribe of the Delawares an aggregate body of land whose amount was determined as aforesaid. Remember that the Cherokees did not attempt to

distribute this quantity, but allowed the Delaware Nation to determine whether the land should be divided and how, and left to them all of the questions in regard to the ownership and individual occupancy of the lands, guaranteeing quiet enjoyment.

POINT V.—SUBDIVISION D.

The Delawares Secured Whatever Title the Cherokees Had.

We may concede that no individual Cherokee owned any particular section of land, but the Cherokee Nation as a whole owned all the land. We may concede that no individual Delaware owned any particular portion of the granted lands, but the Delaware tribe as a whole owned them all by right of occupancy. The right of the Delawares born since the agreement in the granted lands depends upon the fact that by birth they became members of the Delaware tribe; upon being born they have a communal interest in all of the lands belonging to the tribe. The rights of any individual Delaware to the Delaware grant of land are certainly no less than the rights of any individual Cherokee in the rest of the common domain. The courts have held that an individual Cherokee citizen has such a permanent right in lands occupied and improved as amounts practically to a fee, and this right of occupancy may be transferred to other citizens, or may descend by inheritance. He practically gets the land and its increase as though he holds a fee; he has a durable and permanent interest in the lands so as to entitle him to compensation if any additional servitude is placed upon him, as in the construction of a railroad. While a Cherokee citizen does not have a fee in the land he occupies, he can hold it forever and enjoy his profits, and this right may descend to his heirs.

Payne *vs* Railroad, 46 Fed. Rep. 546.

Now, if the Delaware tribe got from the Cherokee Nation whatever title that nation had to these granted lands, the

individual rights of the individual members of the Delaware tribe must be at least as great in such lands occupied by them as was the case with Cherokee citizens prior to the grant.

It is not important as between the parties hereto whether the Delawares got a fee or Indian title by occupancy; they certainly got such a title as lasts as long as members of the tribe (whether born before or after the agreement) shall be in existence. There was nothing said in the agreement that after the death of the registered Delawares the land granted should *revert* to the Cherokee Nation and become a part of the national domain. On the contrary, all the expressions of the agreement go to show that the Cherokees thought they had parted with this land once and forever.

POINT V.—SUBDIVISION E.

If the Court Below is to be Sustained, the Question Naturally Arises What, if Anything, Did the Delawares Get for Their Extra Payment of $157,600?

As seen in the Journeycake case above quoted, the Delawares secured citizenship rights in the Cherokee Nation, equal rights in all the lands and funds of the Nation, by merely making a specific payment, as provided in the second portion of the agreement.

One of the rights growing out of the citizenship so purchased was to take up, improve, and occupy any part of the common domain, as provided in the Cherokee constitution, article 1, section 2, which also provides that no Cherokee can even dispose of improvements to outside parties (2982).

By Cherokee act of September 24, 1839, in force when the agreement was made, Cherokee citizens were protected from intrusion when they had made their settlements. (See laws of Cherokee Nation, 1875, page 249; see complainant's exhibit 01.)

It is quite evident that by paying $121,824.28 for citizenship, the Delawares acquired as citizens the right to improve

and occupy lands *other than* the 157,600 acres, with such an indefeasible right of possession and occupancy as to be practically a fee simple.

Payne *vs.* Railroad Co., 46 Fed. Rep. 546.

Such a right as this was upheld in the case of the Shawnees, who by their agreement merely bought citizenship rights.

See Cherokee Nation *vs.* Blackfeather, 155 U. S. 218.

If by the payment of $121,824.28 for citizenship, the Delawares had all the rights of occupancy in the public domain of the Cherokee Nation that a native citizen had, as is decided by this court and the Supreme Court, *it is pertinent to ask what rights did the Delawares acquire or what advantages did they gain by paying the additional large sum of $157,600 into the Cherokee treasury, if the contention of the Cherokee Nation now made in this suit is upheld? What did the Delaware tribe gain by paying into the Cherokee treasury $160 on account of each individual of the 985 registered Delawares? Surely they bought something more than mere citizenship by that payment, since they paid another and separate sum (ascertained strictly in accordance with fifteenth article of the treaty of 1866 with the Cherokees) for the right of citizenship alone.*

The total quantity of lands in the Cherokee Nation, if alloted per capita to all citizens of the Nation, it is estimated would give to each citizen about 140 acres. There are about 200 living registered Delawares, and the Cherokee Nation's contention is that all the advantages the Delawares got by the agreement is to have allotted *now* to the living registered Delawares 160 acres each, while the other citizens of the Cherokee Nation will receive only about 140; in other words, the Cherokee Nation's contention is that for the $157,600 paid in by the Delawares, *the Delawares now get on the allotment of the lands twenty acres apiece for 200 Delawares*

more than the other citizens of the Cherokee Nation, or about 4,000 acres, for which they paid thirty-three years ago $157,600, or about $40 an acre, while other lands in the Indian Territory were sold about the same time, some at about nine cents, some at fifteen cents, some at thirty cents, and some at seventy cents, being lands of the same character. Surely the Delawares got something more than this.

Remember that the agreement provides that when the Cherokee lands were allotted "the aggregate amount of land herein provided for the Delawares" shall be guaranteed.

Remember that the guarantee was made "to each Delaware incorporated by these articles into the Cherokee Nation." The persons so incorporated were the 985 Delawares and also their descendants, FOR THESE DESCENDANTS UPON BEING BORN BECAME CHEROKEES.

The guaranty here set forth in the Delaware-Cherokee agreement deserves particular consideration. This guaranty was not merely given to the Delaware Nation as such, but was also a guaranty to each individual who then composed it and to the last survivor or descendant of such individual. This guaranty was, in effect, a statement by the Cherokee Nation to the Delawares that this aggregate body of land should belong to the Delaware Nation and the individual Delawares when the lands should be allotted, no matter what future contingencies should arise, and whether or not 985 Delawares survived, or whether there was only one sole survivor. It was in effect a grant to the nation and the individuals composing it in joint tenancy, with right of survivorship.

This guaranty was for each Delaware, as we have stated, and meant that no matter what should occur in the future, the Delaware lands should be possessed by them forever, even if the remaining lands of the Cherokees by some contingency should be diminished in amount. No contingency should subtract from the Delawares' rights in the lands, and this guaranty extended to the Delaware tribe and its mem-

bers and the remaining descendants of them. Such a guaranty would not be fulfilled if when one Delaware died the common domain of the Delawares should be diminished by 160 acres, and so on for each death. Such a construction would be unreasonable, as we have elsewhere shown.

Thus it will be seen that the expression "160 acres" is thrown in parenthetically for the purpose of showing what was the *aggregate* amount of land provided in the agreement for the Delawares. This provision guaranteed such *aggregate* to each Delaware. It was by no means intended by this part of the agreement to guarantee to the individuals merely 160 acres as long as they lived and occupied the land.

The lands purchased in 1867 were of inconsiderable value, according to market rates. One dollar an acre was a very high price even to pay for these lands in fee simple; it would be a very extraordinarily high price if merely a life estate was purchased. It would practically amount to-day, in view of deaths of registered Delawares, to $40 an acre, as we have seen.

Prices of similar lands in 1867 purchased by the United States ranged from 15 cents to 70 cents an acre, the latter price being fixed by the President for lands of the Cherokees in the Cherokee outlet.

A great body of those outlet lands amounting to over 6,000,000 of acres were appraised by the President at 47.49 cents per acre. The Seminoles bought a tract from the Creeks, consisting of 200,000 acres, at 50 cents an acre. They got a full title to it, and no question is raised as to any interest remaining in the Creek Nation. The Citizen Band of Pottawatomie Indians and the Absentee Shawnees were by the act of 1872 (17 Stats. L. 169) permitted to buy homes within the 30-mile-square tract selected for them out of lands purchased by the United States from the Seminoles and Creeks at the rate per acre paid by the United States, that is, 15 cents for Seminole and 30 cents for Creek lands. These Indians were removed from Kansas.

It is very evident, then, that by paying $157,600 the Delawares got something more than a proportionate share in the lands and funds of the Cherokee Nation.

This additional right must have been a strong title to the 157,600 acres.

If the Delawares had paid two or three cents only an acre then there might be some justice in claiming that they only got life interest; inasmuch as they paid much above the market price of lands, it is clear that they must have got an indefeasible title to the lands purchased.

It is very important to consider that the Delawares, upon paying the amounts specified in the agreement, furnished to the Cherokees interest-bearing 6 per cent bonds. In the record, pages 433 and 457, are shown in detail the bonds which were tranferred from the account of the Delawares to the account of the Cherokees in payment of these moneys.

If the amount paid for these lands had been retained and the interest collected and paid to the Delawares, they would have received in interest up to April 8, 1903, over $340,000, and would still retain the principal of $157,600.

Likewise, the interest for a similar time on $121,824.28, paid for citizenship, would amount to over $263,000, and the principal of that sum would still be on hand.

The interest on the total amount the Delawares paid to the Cherokees for both lands and citizenship amounts to over $603,000, and together with the principal the total amount would be over $882,000.

Now, if the Delawares had kept these funds and received this interest, of course none of it would have reverted to the Cherokee Nation, and this principal and this interest would have been divided per capita among the Delawares now living.

It would seem to follow, therefore, that the *proceeds* of what the Delawares purchased with their moneys in 1867 should also be divided among the Delawares now living, and that it does not belong to the Cherokee Nation any

more than the Delawares' money would have belonged to that Nation if the Delawares had kept it invested for their own account in the said bonds.

POINT V.—SUBDIVISION F.

The Indefeasible Nature of the Delaware Title to Lands in the Cherokee Nation has been Officially Recognized, Both by the Government of the United States and the Cherokee Nation.

The court will take notice of the fact that Hon. Nathaniel G. Taylor was Commissioner of Indian Affairs from March 29, 1867, until April 20, 1869, when he was succeeded by Hon. Eli S. Parker. The dates of Mr. Taylor's service as Commissioner of Indian Affairs include the date of the Delaware-Cherokee agreement, which was April 8, 1867.

The record shows that this agreement was negotiated between the Cherokees and the Delawares at conferences had by the delegates of the two tribes with and in the presence of the Commissioner of Indian Affairs (see deposition John G. Pratt, Rec. p. 85). It was approved by the Secretary of the Interior and by the President of the United States. It is to be supposed, therefore, as the United States itself became a party to the agreement, that the Commissioner of Indian Affairs, who was present at the negotiations and who, no doubt, assisted in them, fully understood the intent of the parties and could correctly state the character of the property obtained by the Delawares in the land they were to select under the agreement out of the Cherokee Nation, east of the 96th meridian of west longitude. It is, therefore, proper to examine the references that may be made by the Commissioner of Indian Affairs, Mr. Taylor, to this agreement, and especially to the question of the rights in the lands that the Delawares bought of the Cherokees.

In the report of April 7, 1869, of the Secretary of the

Interior, Mr. Taylor, as Commissioner of Indian Affairs, makes a statement of the funds held in trust for the Delawares by the Government of the United States, and uses language indicating that the Delawares had obtained something more than the mere rights of citizenship in the Cherokee Nation, with the additional right of a life estate in 160 acres of land. Speaking of the agreement, he says:

> "It proves that the Delawares may select a quantity of land east of the line of 96° west longitude, Cherokee Nation, in the aggregate equal to 160 acres for each individual of the Delaware tribe . . . for which land the Cherokees are to be paid from the Delaware funds now held by the United States a sum equal to $1 per acre.
>
> . . . . . .
>
> "The Delawares who elected to remove, or most of them, have been in the Cherokee country about one year, occupying the lands which, by the terms of the agreement, were purchased from the Cherokees, and the latter are consequently desirous of having the matter concluded and finally disposed of by the Delawares either paying the amount due from them or having a sufficient amount of their stocks placed to the credit of the Cherokee Nation."

The Cherokee Nation up to and within the past few years has always admitted that the Delawares had full title to the lands sold to them under the agreement of 1867, and the attention of the court is invited to the fact that, in a case heretotore tried in court below, entitled "Journeycake vs. The United States and the Cherokee Nation," numbered 16,837 (28 C. Cl. 281), the defense of the Cherokee Nation was based partly on the allegation, as set forth in Defendants' Suggestion of Facts, Number 8—

> "that by the terms of said agreement and the payment of said sum of $157,600 said Delawares became the sole and separate owners of 157,600 acres of land east of the 96th, and no more, and acquire under said

agreement no other or further interest in the lands or dominion of the Cherokee Nation."

It will be remembered that the question in the Journey-cake case was what did the Delawares get in buying the rights and immunities of native Cherokees? The Cherokee Nation urged that the rights purchased were merely political. This contention was overthrown.

It was further urged in that suit that the payments made by the Delawares for these rights and immunities of native Cherokees were inadequate compensation for the rights of property claimed by them in that suit, and it was sought to show that to affirm their right would allow to the Delawares a greater property interest in the Cherokee Nation than was enjoyed by citizens of that Nation. It was sought to show, for the purpose of impressing the court with the gross inadequacy of the consideration paid to the Cherokees, that for a total sum of about $283 per capita they would be entitled to enjoy about $1,416 worth of property per capita, of which the Cherokees were alleged to have contributed over five times as much as the Delawares. In order to reach this conclusion the Cherokee outlet lands were estimated at $1.25 per acre. But the Supreme Court held that the basis of calculation was unfair and referred to the prices paid by the Government for the lands of the Creeks, Seminoles, Choctaws, and Chickasaws in 1866 as the proper basis of calculation and as being more nearly the value of the Cherokee lands at the time of the negotiation of the agreement with the Delawares. Taking these prices as a basis, therefore, the court held that the price paid by the Delawares for the privileges of citizenship was not inadequate.

Not only has the Government and the Cherokees recognized the Delaware title, but an investigation of the facts and history of the times indicates that it would be extremely unjust at this late day to so construe the agreement as to practically confiscate property for which many years ago the Delawares paid an excessively high price.

POINT V.—SUBDIVISION G.

The Nature of the Indian Title Secured by the Delawares.

By the agreement between the Delawares and the Cherokee Nation the Delawares got all the title to the land up to that time held by the Cherokee Nation, and whatever right of reversion the United States had in said lands also passed to the Delawares by the United States becoming a party to the agreement. The agreement, in fact, was a tripartite agreement, the parties being the Delawares, the Cherokees, and the United States. The subject-matter of that part of the agreement which related to the purchase of land was one in which the United States and the Cherokees were interested, and in which, by the agreement, the Delawares acquired the interests therein set forth.

As has been seen and herein stated, the Delawares acquired by agreement all the title of the Cherokees in the land and reversionary interest of the United States, if any existed in the United States. The only limitation on that title is expressed in the agreement, and that is, that the right of alienation is restricted to such alienation as was permissible under the constitution and laws of the Cherokee Nation. That is, the Delawares could not sell the lands to citizens of the United States, and this for the reason that it was against the policy of the Cherokee Nation to have within the Nation any class of residents owning property who would not be subject to the jurisdiction of the government of the Nation.

The title of the Cherokee Nation is a matter which has been passed on judicially in numerous forms of litigation. It has been described by the courts as a—

> "base, qualified, or determinable fee, without the right of reversion and only the possibility of reversion in the United States."

United States *vs.* Rogers, 23 Fed. Rep. 659.
In re Wolf, 27 Fed. 606.
Cherokee Nation *vs.* R. R. Co., 33 Fed. Rep. 900.

The courts have also held that, by the treaty of December 29, 1835 (7 Stat. 478), the United States made the sale of the lands to the Nation in fee simple, and that the fact and validity of this sale have been recognized by Congress through appropriations made in execution of the treaty making it.

Holden *vs.* Joy, 17 Wall, 211.
Mehlin *vs.* Ice, 56 Fed. Rep. 12.
Payne *vs.* R. R. Co., 46 Fed. Rep. 546.

The evidence of title of the Cherokees is contained in the treaties of 1828, 1833, and 1835 and the patent issued by the United States in 1838.

In the patent there is contained the following clause, in the hadendum thereof, to wit:

> "And subject also to the condition provided by the act of Congress of the twenty-eighth of May, one thousand eight hundred and thirty, referred to in the above recited third article, and which condition is that the lands hereby granted shall revert to the United States if said Cherokee Nation becomes extinct or abandons the same."

Besides the fact that the condition which would forfeit the title of the Cherokees to the United States or which would cause the reversion of the lands to the United States under this clause of the patent, has not occurred, and the fact that the courts have said that this clause does not create in the United States a right of reversion, but only a possibility of reversion, the courts without deciding the question have expressed a doubt as to the validity of that condition, saying that by the treaty of 1833 the grant was made to the Cherokee Nation in words sufficient to carry the fee and no greater title was obtained by the Nation in the treaty of 1835; that if, therefore, the clause imposing the condition

upon which reversion might occur was in restriction of the title granted by the treaties making the same, it would be void; and that, if the treaty of 1833, which granted the lands to the Cherokee Nation, did not provide for a condition limiting the title to the lands thus granted, this title could not be limited or affected by the importation into the patent of such condition and the same would be void and treated as surplusage in considering the title under the patent.

United States *vs.* Reese, 5 Dill. 405.

Certainly the Delawares secured whatever titles the Cherokees had, whether a base fee or an Indian title of occupancy.

It is sufficient to say that all title of the Cherokees in said lands was extinguished; that the full Cherokee title passed to the Delaware tribe as to 157,600 acres; that these lands are subject to allotment by the Delaware Council to its own people, as provided in the 4th article of the Delaware treaty of 1866, and that the mere restriction on alienation is of no force as an argument to cut down the title. This restriction will fall when the Cherokee government is abolished and when the lands are allotted. If a mere life estate had been granted to individual Delawares, this fact would necessarily have been particularly referred to and made plain beyond a peradventure.

POINT VI.

The Extrinsic Evidence Taken Aids the Court in Coming to a Decision That This Large Sum of Money Could Not Have Been Paid for the Securing Merely of 985 Separate Life Interests.

A. *This evidence discloses that many of the registered Delawares died* before the land contracted for had been turned over to the Delaware tribe. Nevertheless, the full amount contracted for, according to the roll of the 985 Delawares, was actually paid in and no objection was made by either

party on account of the death of numerous of these Delawares.

That such deaths occurred and that such were the facts as above stated, is shown by the evidence of the following witnesses: Simon Secondyne (36); John Bullette (41), who shows that at least 150 registered Delawares died before arriving in the Indian Territory; James Wilson (48); (Mary E. Armstrong (57); Mary C. Beysiau (65); Henry Armstrong (72); William Adams (80); John G. Pratt (90–91); Sally O. Smith (97).

If the individual Delawares simply got life estates, why should the total amount contracted for, on the theory of 985 Delawares, be paid, irrespective of the question whether some had previously died?

No sane man would pay out money for a life estate if the person upon whose life the estate depended had already died, and hence the argument is very persuasive that more than life estates was purchased.

B. *The evidence also discloses that the same price was paid on account of old and infirm Delawares on the list as for the young and strong.*

If mere life estates were to be purchased, the price for each estate would depend upon the age of the life tenant. Why, then, did the Delawares pay the same price for lands to be selected by a feeble old man, say of 80, as for a sturdy young man of 20? This can only be explained upon the theory that the tribe was buying an aggregate amount of land. If life estates were being purchased or intended, the price would vary with the age or good health of the life tenant.

Remember, that the *tribal* funds were being used in purchasing; there were no individual funds. If the tribe got indefeasible title, there would be reason why the same price should be paid for all lands; otherwise not.

Another significant fact is this: Under the Delaware

treaty made prior to this agreement, any member of the tribe had an option to sever his connection with the tribe and withdraw from the treasury his proportionate interest in all the Delaware tribal funds (article 9, treaty of July 4, 1866, 14 Stat. 796).

It would have been a very improvident arrangement for an old member of the Delaware tribe, with this privilege of withdrawing funds, to have consented to the payment on his behalf of $160 for a life estate in 160 acres of land, which he might enjoy only for a day or a year or so.

All the surrounding circumstances of the transaction are such that to construe the agreement as merely granting life estates would do violence to common sense as well as to the intention of all parties concerned.

C. *The price paid by the Delawares has an important bearing on this subject.*

We have already referred to this matter before.

Not more than two months before the agreement was made, the principal Cherokee chief, on February 13, 1867, offered to sell to the Government all of the Cherokee lands west of the 96th meridian, some of the lands being really better than those acquired by the Delawares, at 50 cents an acre for lands east of the 99th meridian and 20 cents an acre for lands west of the said meridian (430).

In 1866 the Creeks sold their country west of a certain line to the United States for 30 cents an acre, and the Seminoles sold their country to the United States at 15 cents (Senate Ex. Doc. No. 78, 51st Congress, 1st session, Journeycake case, 155 U. S. 214).

After selling lands to Delawares at $1 an acre, the Cherokees sold lands to the Osage and Kansas Indians just west of the 96th meridian, some of the best lands in the Territory of Oklahoma, by an absolute title, for which a patent was issued, at the price of only 70 cents an acre (474).

In 1879 all of the lands of the Cherokees west of the 96th meridian were appraised by the President at 47.49 cents per acre, with the exception of 230,000 acres sold to the Pawnees at 70 cents an acre (Rec. p. 474). It will be remembered that these lands sold to the Osages not only passed in full title to the Indians, but also passed out of the governmental jurisdiction of the Cherokee Nation. It is not reasonable to suppose that the Delawares were asked to pay $1 an acre for life estates in land over which the government of the Cherokee Nation retained jurisdiction for governmental purposes, and which the Delawares were forbidden to sell except as provided in the constitution and laws of the Nation, when about the same time, or even later, the Nation was selling similar land to other Indians at cheaper prices and entirely free of any claim of right or jurisdiction whatever, either of property in the land or of control over the uses to which it might be put, in the Cherokee Nation.

There are thus several reasons why the contention of the Cherokee Nation that the Delawares bought only a life estate in 160 acres per capita, to be selected within the Cherokee Nation, can not be admitted on any principle of equity, justice, or right.

There is important testimony on this subject. Mrs. Beysiau states that this higher price was paid because the Delawares in addition to the specific lands purchased were to get, by the payment of additional sums of money, general rights in the remaining lands and funds (64).

William Adams testifies to the same effect (59).

Although we have somewhat at large gone into the question of value of surrounding land at the time, we think it such an important matter that we will give further facts with respect thereto.

Letter of February 13, 1867, signed William P. Ross, principal chief, Riley Keyes, and Jesse Bushyhead, Cherokee delegation, addressed to L. V. Bogy, Commissioner of Indian Affairs:

"On behalf of the Cherokee Nation we represent we herewith offer to sell to the Government all of the Cherokee lands lying west of the 96° west, containing eight or nine millions of acres. If taken in a body we would sell all lying between 96° and 99° for fifty cents an acre, and all west of 99° at twenty cents an acre. We would prefer to dispose of the whole amount in a body at a smaller price than to have it picked and culled over" (Rec. p. 430).

Letter May 3, 1899, from Acting Commissioner of Indian Affairs to M. E. Hawley shows:

1. In pursuance of the provision of article 16 of the treaty of July 19, 1866 (14 Stats. 804), the tract of country bounded on the east by the 96° west longitute, on the south and west by the Creek country and the main channel of the Arkansas River, was set apart for the Osage and Kansas Indians, containing 1,566,784 acres, and was paid for to the Cherokees by the Osages at 70 cents per acre. See deed dated June 14, 1883 (22 Stats. 624), which deed is recorded in volume 6 of Indian Deeds, one of the records of the office of Indian Affairs.

2. The total area of Cherokee lands lying west of the Arkansas River originally amounted to 6,574,486.55 acres. On June 23, 1879, in pursuance of the act of 1872 (17 Stats. p. 190) and of the act of 1876 (19 Stats. p. 120) the President appraised the value of that land as follows:

6,344,572.51 acres at 47.49 cents per acre.

230,014.04 acres at 70 cents per acre.

The data furnished by the commission upon which the President fixed the value is found in H. R. Ex. Doc. No. 54, 47th Congress, second session (Rec. p. 474).

3. By the third article of the treaty of June, 1866 (14 Stats. p. 786), the Creeks ceded to the United States the west half of their entire domain, containing 3,402,430.48 acres, for which lands the United States paid at the rate of 30 cents per acre.

4. The Creek Nation ceded to the Seminole Indians a portion of their domain included in certain boundaries in consideration of the moneys set out in their treaty of August 7, 1856 (11 Stats. p. 699).

5. The Seminoles ceded to the United States their entire domain (14 Stats. p. 756), being the same land ceded to them by the Creek treaty of 1856 and the United States ceded to them the tract of land containing 200,000 acres out of the cession made by the Creek treaty of June 14, 1866 (14 Stats. p. 786). The consideration was $325,362 for 2,169,080 acres of Seminole land and the consideration for 200,000 acres ceded to the Seminoles was 50 cents per acre, all of which appears by the treaty of March 21, 1866 (Rec. p. 475).

6. The Choctaw relinquished to the United States all their interests in lands west of 100 degrees west longitude, and the Choctaws together with the Chickasaws *leased* to the United States all that portion of their common territory west of the 98° west longitude, containing about 7,700,000 acres for the *permanent* settlement of the Wichitas and other tribes (11 Stats. 611). The consideration of this relinquishment and lease was $600,000. Later, in 1866 (14 Stats. p. 769), the Chocktaws and Chickasaws, in consideration of $300,000, ceded to the United States the lands leased as above, so that the 7,700,000 acres were first leased for $600,000 and then sold for $300,000, making a total consideration of $900,000, being about 9 cents per acre (Rec. p. 476). Stated in the opinion of the Supreme Court in Cherokee Nation *vs.* Journeycake, 155 U.S. 214, to have been five cents per acre.

Why should it not be held that the Delawares at least got as a tribe a title of occupancy by paying $1 an acre when other tribes secured a fee simple title to similar lands by paying less than $1 per acre?

Land was offered to the Delawares by others than the Cherokees for 30 to 40 cents an acre (William Adams, Rec. p. 80).

Nowhere in the history of the times is there any record of the granting of life interests only to Indians.

Furthermore, we have been unable to find any case where by treaty with the United States or with Indians any Indian tribe granted to a set of individual Indians interests merely for life. We think such a condition of affairs is unknown.

D. *The consideration of what title the Delawares had in Kansas becomes material.* Is it to be supposed that they exchanged a certain and clear title for merely a life estate in the lands which they subsequently bought?

The lands which the Delawares left in Kansas upon removal under the agreement they owned in severalty; they owned them by an indefeasible right (Rec. p. 482).

In the Delaware treaty it was provided that they need not leave their homes in Kansas "*until after they shall have selected and received title to lands for new homes elsewhere.*"

As we shall see, the Delawares never dreamed that they were purchasing life estates for their individual lives. The Delawares entered into the agreement knowing what nature of title they had in Kansas. It is unlikely that they would have consented to the agreement under any circumstances, if merely life estates were intended.

The evidence which we will disclose later shows that heads of families selected lands in Indian Territory, such lands as they thought best for their families; did this as members of the Delaware tribe, and each member went on doing this until the aggregate amount of land was secured. If they had remained in Kansas their wives and children would have inherited, by virtue of the Delaware treaty of 1860, which in article 2 provided that the Secretary of the Interior should makes rules as to Kansas lands in case of death, so that they should be secured to the families of such deceased persons.

The contention of the Cherokees is a strained one. It does violence to the language of the agreement and to the surrounding circumstances. Their argument is improbable in

itself and contrary to the logic of the situation. People do not give something for nothing; old people do not buy life estates, or if they do old people do *not* pay the same price for life estates as do young people.

It is not to be presumed that the Delawares intended, by going to Indian Territory, to spend their tribal funds in buying a worthless or temporary interest in lands, and certainly this could not have been the purpose of the Government.

POINT VII.

The Parole Evidence Which Has Been Taken Is Both Competent and Admissible, Notwithstanding the Objections of the Respondents.

There are two reasons why this is true—

A. In the first place, it is always proper to show concerning a treaty the contemporaneous understanding of the parties and the surrounding circumstances.

B. It is likewise proper in explaining a document to give parole evidence in order to make its provisions clear.

A.

THE PAROLE EVIDENCE WE GAVE TO SHOW THE CONTEMPORANEOUS UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE TREATIES OF 1866 AND AGREEMENT OF 1867 IS UNQUESTIONABLY COMPETENT AND ADMISSIBLE.

Although the agreement was between two Indian nations or tribes, yet they were not equal in education or experience in affairs, or in the conduct of organized government.

The Cherokees for over thirty years had been an established constitutional government, with executive, legislative, and judicial departments. Its representatives were men of education, one a Princeton graduate and able lawyer, another Chief Justice of the Supreme Court of the Nation (309).

On the other hand, the principal chief of the Delawares, Connor, who headed the delegation, *could not write his name, and signed the treaty by a mark.* The Delawares had not had experience in governmental affairs, their form of government being still the ancient patriarchial form of chiefs and councilors, the chiefs holding office by hereditary right.

These facts show a great disparity between the contracting parties, and the Delawares therefore occupied the position of the weaker party, as in cases where Indian tribes negotiate with the United States, and can invoke the rule invoked by Indian tribes when making treaties with the United States.

The rule as established by this court is as follows:

> "The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used in the latter sense. How the words of the treaty *were understood by this unlettered people*, rather than their critical meaning, should form the rule of construction."
>
> Worcester *vs.* Georgia, 6 Pet. 515, opinion by Marshall, Chief Justice.
>
> Choctaw Nation *vs.* United States, 119 U. S. 1.
>
> Jones *vs.* Meehan, 175 U. S. 1.
>
> Wau-pe-man-qua *vs.* Aldrich, 28 Fed. Rep. 489.

The reason for this rule is very clearly and forcibly expressed in Worcester *vs.* Georgia, 6 Pet., star page 551, by Chief Justice Marshall, who said:

> "There is more reason for supposing that the Cherokee chiefs were not very critical judges of language by the fact that every one makes his mark. No chief was capable of signing his name. It is probable the treaty was interpreted to them."

Two of the delegation of the Delawares signed the agreement by mark, one being the head chief; doubtless the rest

followed his leadership. If the treaty did not express what was understood by the Delawares it was the fault of their education and of their inability to read or write.

This point is of great importance as establishing the intellectual advantages of the Cherokee representatives over those representing the Delawares.

> "An Indian treaty, like any other instrument, must be construed in the light of its obvious purpose, and general words may often be limited and restricted by such purpose."
>
> Miami Co. *vs.* Breckenridge, 12 Kans. 114.

In the next point we will discuss the evidence which shows what understanding the Delawares had of the agreement.

One of the Cherokee senators, at the time (Benge, p. 330), shows that at the time both parties understood that full title passed.

In construing the treaty the court will take into consideration the situation of the parties, the property involved, and the *intention and purpose* of the parties, the construction they gave it, and the construction which was adopted and acted upon by the parties.

> United States *vs.* Payne, 8 Fed. Rep. 883.
> Wilson *vs.* Wall, 6 Wallace 83.

Ex-Indian Agent Pratt and other witnesses testified that both parties understood that the Delawares were to own the land outright (53, 54).

It is unquestionably the law that parole evidence is admissible to explain the terms of Indian treaties or the circumstances which surround them.

> Worcester *vs.* City of Georgia, 6 Peters, 515, supra.
> See, also, re Kansas Indians, 5 Wallace, 737, 760.
> Choctaw Nation *vs.* United States, 119 U. S. 1.

B.

IF THE AGREEMENT OF 1867 IS REGARDED AS A DEED, EXTRINSIC EVIDENCE IS STILL COMPETENT, FOR WE DO NOT ATTEMPT TO CONTRADICT IT OR TO VARY ITS TERMS. WE MERELY DESIRE TO EXPLAIN AMBIGUITIES WHICH ARE LATENT IN THE INSTRUMENT. THAT WE HAVE A RIGHT TO DO THIS IS SHOWN BY AN EXAMINATION OF THE AUTHORITIES.

Greenleaf on Evidence, secs. 277, 282.

It has been our endeavor, by the depositions and proofs introduced, to place the court as nearly as possible in the position of the contracting parties, in order that the court may be enabled to accurately interpret the language used in the contract, according to what it was understood to mean and what was intended by the parties.

> "Whatever be the nature of the document under review, the object is to discover the intention of the writer, as evidenced by the words he has used; and in order to do this, the court must put itself in the writer's place and then see how the terms of the instrument affect the property or subject-matter."

Jenkins *vs.* Cooper, 50 Ala. 419.
Swaine *vs.* Vance, 28 Ark. 282.
Brick *vs.* Brick, 98 U. S. 514.
Phelps *vs.* Clasen, 1 Woolw. (U. S.) 204.
Tibbs *vs.* Morris, 44 Barb. (N. Y.) 138.
King *vs.* Merriman, 38 Minn. 47.

POINT VIII.

Extrinsic Evidence, Consisting of Testimony and Documents From Official Records Shows, That the Delawares, Cherokees, and the Government Have Always Understood That Under the Treaties of 1866 and the Agreement of 1867 the Delawares as a Tribe Acquired Clear Title to 157,600 Acres Purchased.

In discussing this evidence we will consider it under several separate heads.

A. *The witnesses who testified* are well qualified to aid the court. They are prominent men or women of the Delawares, who talked with chiefs or representatives of the tribe; are intelligent and clear in their testimony, and one especially, Mr. Benge, was a member of the Cherokee council and one of the signers of the Cherokee treaty.

It is unnecessary to quote from their testimony, but who they are and what their opportunities for knowledge were can be seen by an examination of the record. They are Simon Secondyne (34, 35); John Bullette (39, 40, 42); James Wilson (47, 49); Mary E. Armstrong (52, 56); Mary C. Beysiau (64); Henry Armstrong (80); John G. Pratt, ex-Indian agent (83, 84, 85); Sally O. Smith (95, 96, 97); Sam Houston Benge (330 to 333).

Remember that *all* the Delawares who had personal knowledge of the transactions in Washington, when the agreement was negotiated, are *dead* (see evidence of John Bullette, 43; Mary E. Armstrong, 57; John G. Pratt, 89, 90).

B. *The agreement between the Delawares and the Cherokees was the subject of constant discussion* among the Delawares before, during the time, and after it was negotiated, and especially at the time when the Delawares lived in Kansas. Everyone understood that although some registered Delawares had died, nevertheless, that the tribe, including the heirs of such Delawares, would get the land.

The evidence on this point is quite full (Simon Secondyne, 34–38; John Bullette, 40, 43; James Wilson, 47–50; Mary E. Armstrong, 52–60; Mary Baysiau, Henry Armstrong, William Adams, 64, 69, 78–80; John G. Pratt, 84–92; Sally O. Smith, 95).

The Delawares did not particularly desire to leave Kansas, but were induced to do so upon the promise that they as a tribe would secure permanent homes elsewhere and become citizens in the Cherokee Nation, and in addition as a tribe secure a large body of land.

The Delawares understood that they were to get two things: *First*, citizenship and rights accruing therefrom, and *next*, this large aggregate body of land. Upon the faith of these promises they made the treaty or agreement and removed. They had a chance to buy equally valuable lands elsewhere for less money, but the double proposition was an attractive one (John Bullette, 41, etc.; Mary Armstrong, 53–56; William Adams, 81; John G. Pratt, 92–93).

The Delawares fully believed that deaths of registered Delawares would make no difference.

It is not so infrequent in the history of dealings with Indian tribes that they have been persuaded to do certain things upon definite promises which have not been carried out. We trust that the present case may be an exception.

The Delawares understood and were given to understand that by paying a separate sum of money from their tribal funds at the rate of $1 per acre, the tribe would get an indefeasible title to the land purchased which would belong to the tribe and its varying members, irrespective of the deaths from time to time of such members.

They likewise understood and were given to understand and believed that in addition, by the payment of an additional sum of money they were to secure citizenship rights in the Cherokee Nation, with equal rights as to all remaining lands and funds of the Nation.

They thought they were buying land and also a com-

munal right in the Cherokee Nation (35, 36, 37). They believed they were getting clear title to the lands purchased (4) because of their paying extra money (41, 43, 44); the land was to be their own (47, 48, 53–57, 60, 62). The two transactions, purchase of land and purchase of citizenship, were regarded by them as different and distinct matters (65, 66, 70, 82–83).

The whole history of the negotiations for a treaty and an agreement is well stated by Agent Pratt in his testimony, and his version of the facts agrees with what we contend is the meaning of the agreement (86–88). As Mr. Pratt says about the Delawares:

> "They wanted to be possessed of a home for themselves and their children. They did not want to have it with their lives, but it was to be a continued possession of the Delawares and their children."

Sally O. Smith well states:

> "The Delawares, when so many of them died before the payment was made, did not object to paying $160 for every enrolled Delaware, because they thought when they bought the land and paid for it that their heirs would get it afterwards, and when we paid for the land we thought it was ours" (96, 97).

Mr. Benge, a member of the Cherokee senate at the time, says that selling the land and selling the citizenship were two separate things, and was so understood (330–334).

C. *The official correspondence in the Indian office and other departments bears out our interpretation of the agreement.*

Letter of September 13, 1863, Johnson, Indian agent, to Dole, Commissioner of Indian Affairs.

This letter refers to the anxiety of the Delawares for definite information as to the cession of a part of the Indian Territory:

> "The Delawares wish that portion of the Cherokee country adjoining the State of Kansas, 12 miles wide by 15 long, lying on the Verdigris" (Rec. p. 445).

In a letter of November 30, 1863, to Commissioner Dole, Agent Johnson reported:

> "I am instructed by the Delaware chiefs to inform you that they have visited the Cherokee country with a view of looking out a *new home.* They request me to say to you that they are well pleased with that part of the country which they visited and are willing to accept it as their future home. They desire that the Government *purchase* for them of the Cherokees a tract of country at Caney Creek, commencing at a point on the line dividing the State of Kansas from the Cherokee country, five miles west of said creek, running west with said line 15 miles, thence south 30 miles, thence east 15 miles, thence north 30 miles to the place of beginning.
>
> "At the time of their visit they could not purchase land as there was no authorized power in the Cherokee Nation to make treaties or to dispose of any part of their lands. Having full faith and confidence in the ability and justice of the United States, they desire that the Government purchase for them the tract of country designated and will be satisfied with the *purchase* made in their behalf" (Rec. p. 445).

In another letter of November 30, 1863, to Commissioner Dole, Agent Johnson stated that:

> "The country selected is about 20 miles west of the Verdigris, and is very desirable (Rec. p. 445). Should the Department consider the amount of land too large, I think the Delawares will be satisfied with the amount of land that you may designate, and I think will be satisfied with a reservation 10 by 20 miles in size" (Rec. p. 446). (This would be 120,000 acres.)

Letter of March 10, 1864, to Commissioner Dole. Agent Johnson has this to say:

> "On the 30th of November I wrote to the Department, *at the request of the chief,* desiring you to *pur-*

> *chase* a portion of the country for them. . . . The Delawares are willing to make a treaty provided they have a country secured to remove to. . . . Delaware lands are the most desirable of any in Kansas and are daily increasing in value" (Rec. p. 451).

And in a letter of March 21, 1864, he wrote Commissioner Dole as follows:

> "I am requested by the chiefs of the Delaware tribe of Indians to inform you that they received your letter stating that John Ross, head chief of the Cherokees, will shortly visit the Delawares in Kansas on his way home to the Indian country, and that the Delawares will be enabled to *purchase* land of the Cherokees" (Rec. p. 451).

August 25, 1866, Thomas Murphy, superintendent of Indian Affairs, wrote to Hon. D. N. Cooley, Commissioner of Indian Affairs and said:

> "I have the honor herewith to transmit a letter from Agent Pratt of the 21st inst. enclosing a letter from the Delaware chiefs asking when they will be permitted to select a home for their people. . . . I beg leave to call your attention to this subject and again recommend that a delegation of the Delawares may be permitted to visit the southern country at an early date to select suitable homes for their people" (Rec. p. 453).

August 17, 1866, John Connor, principal chief, and Charles Journeycake, assistant chief, of the Delawares, wrote to John G. Pratt, United States Indian agent in Kansas, saying that:

> "We wish to know through you from the superintendent where we are to seek a new home for our people" (Rec. p. 454).

August 14, 1867, Thomas Murphy, superintendent Indian Affairs, wrote Hon. C. E. Mix, Acting Commissioner Indian Affairs, and said:

"As it is the particular desire of these Indians (Delawares) to remove to their *new homes* in the Cherokee country the coming fall, I respectfully request the department will, without delay, take the necessary steps," etc. (Rec. p. 480).

August 6, 1867, Mr. Pratt, Indian agent, wrote to Thomas Murphy, superintendent of Indian Affairs in Kansas, which was enclosed with the preceding letter, and which is an explanatory report on the book which is the registry of the Delaware Indians. This report described the register mentioned as giving, among other things, the names of the Delawares—

1. "Who has elected to remove from their present homes and vacate their lands in Kansas, together with a description of the same, the valuation thereof and the valuation of the improvements."

Note that Pratt refers to the lands which the Indians held in Kansas in severalty as "their present homes" (Rec. p. 481).

2. A statement of the Delaware Indians, deceased, who belonged to the families of the removing class (Rec. p. 482).

3. A list of those who belonged to the citizen class (Rec. p. 482).

4. A description and value of the unallotted tracts and the improvements.

5. A list of the persons who originally elected to become citizens, and references to those who have since elected to remove with the tribe.

6. A condensed table noting the number of acres, the valuation thereof, and the valuation of the improvements on the Delaware diminished reserve (Rec. p. 483).

In other words, Agent Pratt, in his statement, itemizes the value of the old homes of the Delawares and all that they contain, giving an inventory of all their possessions, which, it has been seen, they hold in severalty with the right to dispose of in the open market. He ends up his letter as follows:

> "The chiefs and councilors are very anxious to remove to their *new homes* this fall, so that during the winter they can be building houses and preparing fields to till next year" (Rec. p. 483).

Thus, it is seen that the Indian agent, the mouthpiece of the Delaware Indians, considered their title in the place to which they were to remove no different from their tenure of land in Kansas. One was an old home and the other was a new home.

A paper called Exhibit C, marked "Delaware M. 1277," is a credential furnished to the Delaware delegates, dated October 13, 1866, signed by John G. Pratt, United States Indian agent. A part of it reads as follows:

> "Now, therefore, in accordance therewith I do hereby certify on honor that at a council of said Delawares held at this office on the 13th day of October, A. D. 1866, it was determined by said council that the following persons were and are fully authorized to act for and on behalf of said tribe, to wit:
>
> "Captain John Connor; principal chief, Captain Sarcoxie, Charles Journeycake, assistant chiefs, by Joseph Armstrong (substitute), Andrew Miller, councillors; Isaac Johycake (Journeycake), United States interpreter. And that they have full, ample and complete authority to select and secure *new homes* in the Indian country for said tribe" (Rec. p. 465).

Letter of February 13, 1868, from Thomas Murphy, superintendent of Indian Affairs, to N. G. Taylor, Commissioner.

This letter transmits Agent Pratt's report and exhibits, which—

> "Contain a complete history relative to the procuring of a new home for the Delawares in the Indian country and their removal thereto, and I have only to add that I am familiar with these transactions and that the statements contained in the agent's report are in the main correct" (Rec. p. 460).

Pratt's report condensed is as follows:

On the 1st of September, 1866, D. N. Cooley, then Commissioner of Indian Affairs, directed that a delegation of Delaware Indians be permitted to proceed south for the purpose of selecting new homes in the Indian country south of the State of Kansas. They held a council at my office on October 14, and appointed a committee. The delegation, with a large number of other Delawares, about October 22, 1866, proceeded south for the purpose of selecting a *new home* for their people. With their people and two commissioners appointed by the Cherokees, they explored the Cherokee country west of the 96th meridian and decided that there was not sufficient good land there to meet the wants of the people. They, thereupon, *preserving their tribal organization*, selected *for their future home* that portion of the Little Verdigris country commencing at the Kansas State line where the 96th meridian crosses the same; thence east ten miles; thence south thirty miles; thence west ten miles; thence north thirty miles to the place of beginning. It will be seen that the selection of *their future homes* was east of the 96th degree of longitude (Rec. p. 461). The people appeared to be satisfied with the exploration and selection of their new home. A number of regular councils had also been held and the whole matter looked into in every aspect (Rec. p. 462).

> "In conclusion I beg leave to state that at this time four-fifths of the Delaware Indians have left this reserve and are now in the Cherokee country or en route for it, designing to make their new homes there in accordance with the agreement entered into with the Cherokees, of whom some have already purchased farms and have made arrangements to cultivate the same" (Rec. 463).

Attached to Pratt's report there is a paper marked "Exhibit A," which is a letter dated September 1, 1866, written by Hon. D. N. Cooley, Commissioner, to Thomas Murphy, superintendent of Indian Affairs, at Atchison, Kans. The following extracts are noteworthy:

> "When under the provisions of the Delaware treaty of July 4, 1866, copies of which are herewith enclosed, it is contemplated that the Indians may select for themselves, with the approval of the Department, a new location in the Indian country south of Kansas, amounting to 160 acres, if they wish for so much, for each person who will remove" (Rec. p. 463).

(Note that the words "new location" are used. Phrases of this kind would give the Indian the impression that his new home would be held by him in the same manner as his old home in Kansas. He wasn't told that he would have a place of residence. On the contrary, words and phrases were used which led him to believe that he would have in the Indian Territory just what he had left in Kansas, except that it would be new to take the place of old.)

There is a paper marked "Exhibit B," which accompanies Pratt's report. It is a letter dated October 13, 1866, signed John G. Pratt, Indian agent, addressed to—

Captain John Connor, Head Chief.

Captain Sarcoxie, } Assistant Chiefs, unable to go.
Charles Journeycake, }

Joseph Armstrong, } Councillors.
Andrew Miller, }

Isaac Journeycake, U. S. Int'r, Delegation.

This letter commences as follows:

> "I am directed by the Hon. D. N. Cooley, Commissioner of Indian Affairs, under date of September 1, 1866, to furnish you with such instructions and information as will enable you to proceed south and select for your tribe a new reserve in the country. For your information all these lands in the Indian country which are open for settlement and selection, together with a map thereof, and also a copy of your treaty, as well as that of the Cherokees, are herewith furnished you for your guide, and you may select lands in quantities of 80 or 160 acres, as you may deem wise" (Rec. p. 464).

(Note that the reserve is called a "new reserve," thus in-

timating that they will get in the new country the equivalent of what they left in the old; and note that they are told that they may select such lands as they may desire. It is natural to assume that when these delegates returned to their nation they spoke of the country which they were going to have as a new home which would belong to them and their children forever, thus verifying the testimony which we have taken.)

D. *Not only did the Delawares think that they acquired these particular lands by good title, but they acted upon this assumption;* they occupied and improved them. These contemporaneous acts are important to be considered in construing the document.

The evidence is quite full on this point, and shows that the Delawares arrived in the Indian Territory, selected farms, made improvements, expended large sums of money, and that they and their descendants have lived on these farms ever since; some of the improvements on each of the tracts have cost from $6,000 to $8,000, more or less.

If a registered Delaware believed that he merely would get a right for his own life, it is not reasonable to suppose he would have made these valuable improvements, his tenure being so uncertain.

See record, pages 36, 37, 43, 46, 48, 57, 65, 66, 67, 71, 72, 75, 76, 80, 98.

Whatever the *present* officers of the Government may think is the meaning of the treaty, it is evident that about the *time* of the treaty or agreement the Government was of the opinion that the Delawares had secured good title to these lands.

In the annual report of the Commissioner of Indian Affairs for 1869, pages 502, 503, it is stated as follows (of which this court will take judicial notice):

"SALE OF CHEROKEE LANDS TO DELAWARES.

"The 15th article of a treaty between the United States and the Cherokee Nation, ratified August 11,

1866, provided certain conditions, or terms, upon which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of 96° of west longitude, the price to be agreed upon between said tribes, subject to the approval of the President of the United States.

"And a treaty having been made with the Delaware tribe, ratified August 10, 1866, providing for their removal to certain land to be ceded to the United States by the Cherokees, which was not ceded to the United States, an agreement was made between the Cherokee and Delaware Indians on the 8th of April, 1867, which has since been approved by the President, by which the Cherokees *sold 157,600 acres to the said Delawares at $1 per acre*, in payment for which the Delawares transferred to the Cherokees certain bonds held in trust by the Secretary of the Interior, said Delawares becoming a part of the Cherokee Nation, and by other terms of the contract transferring their pro rata shares of certain other stocks held in trust by the Secretary of the Interior, to the credit of the Cherokee Nation.

"See report of changes in Indian trust fund of this date."

While the court does not take judicial notice of the ordinary records and files of an executive department, the court will, however, take judicial notice of public acts of an executive department printed in public documents either by the department or one of the houses of Congress. See—

Jones *vs.* United States, 137 U. S. 202–214.

New York Indians *vs.* United States, 170 U. S. 1, 32.

E. As the Delawares moved and *selected* and *occupied* lands and *improved* them, relying upon the agreement, it is now too late for the Cherokees to minimize the Delawares' title, especially as the Delawares have changed their position, relying upon the faith of the Cherokee Nation and the treaties and the agreement.

We have already referred to some of the evidence relative to the selection, occupation, and improvement of lands.

Horace M. Adams, in his deposition, testifies to the location of the 157,600 acres selected, which he describes by legal subdivisions, as in possession of the Delawares (338, etc.).

An examination of the record between pages 36 and 98 will substantiate the matters above stated. The precise lands selected are shown in 87 separate exhibits, introduced in connection with the said testimony of Mr. Adams.

The improvements have been very extensive.

Mr. Horace M. Adams has personally examined all of these lands and marked them upon Government plats, and the various exhibits offered in evidence by Mr. Adams were authenticated or prepared by a Mr. Berthrong, employed in the General Land Office (see Rec. pp. 338–424, etc.).

Mr. Adams has visited all of the land in question (344, 386, 387).

F. *There is a well-recognized principle* of law that where a man who has or claims certain rights stands silent and allows another to enter upon land in the belief that he has some right or title, and to make improvements, we say there is a principle of law, which is often invoked, to estop such person from taking any action inconsistent with his previous acquiescence. We invoke this principle also, and all the more strongly inasmuch as our clients, as we have shown, were Indians who, in knowledge and experience, were not on an equality with the other contracting parties, the Cherokees. From what has been said we believe that we have shown to the court that there is a body of land in the Cherokee Nation, consisting in all of 157,600 acres, which is not contiguous and which consists of isolated and well-recognized plots, all of which is in the occupation of Delawares, some of whom, to the extent of 212 in number, are Delawares who were upon the original roll, and the remainder, amounting in all to about 868, are either heirs, children, or descendants of Delawares who were upon such original roll, whether dead or living. We think we have

also established the proposition that all of this body of land is the absolute and indefeasible property of such Delawares.

Under the treaty of 1866 this land as a whole is subject to allotment among the individual Delawares. To be sure, individual Delawares have occupied it in severalty. Doubtless when the Delaware council acts the individual Delawares occupying lands will get such lands or the matter will be one of mutual adjustment. We are not so much concerned with that proposition at present. The important thing, however, is to establish, as we think we have done, that this whole body of land has forever been cut out of the Cherokee lands and is the indefeasible property of our clients.

While it may be true that so long as the Cherokee Nation maintains its government these lands may be called a part of the Cherokee Nation for the purpose of government, still they are not a part of the property of the Cherokee Nation as such.

Furthermore, remember that not only in the Journeycake litigation, but also in other ways, the Cherokees for many years have admitted the Delaware title. They refer to the lands as lands purchased. (See letter of January 25, 1869, from the principal chief of the Cherokee Nation, Rec. p. 431; letter of March 14, 1874, from the treasurer of Cherokee Nation, Rec. pp. 455, 556).

See also letter dated June 19, 1890, from the delegates of the Cherokee Nation to the Committee on Indian Affairs, which contains a statement—

> "As has been seen, the Delawares purchased 157,600 acres of Cherokee lands lying east of the 96th degree. *That was an* absolute and unconditional purchase, and in which land the Cherokee Nation has no title or interest."
>
> Journeycake *vs.* Cherokee Nation and United States, 28 Court of Claims, 309.

POINT IX.

Treaties With the Delawares Prior to 1866 Show Not Only that the Delawares Were Guaranteed Protection, but Also that it Had Been Customary for Them Both to Sell and to Buy Landed Interest With the Approval and Acquiescence of the United States.

It is not to be presumed that all of a sudden in 1866 and 1867 an entirely new Indian estate in land was created for themselves, namely, estates for life in severalty, to the individual members of the tribe.

It is fair to presume that the Government's policy in regard to Indian titles had not changed. It is fair to presume that in making the agreement of 1867 it was made in the light of prior treaties, and that neither party or the Government for a moment imagined or thought of anything like a life estate.

Before moving to Indian Territory the Delawares for years had permanent homes; had had title by occupancy; communal rights in the tribe. Hence, a brief history of what prior treaties provided is instructive to aid in the interpretation of the Delaware-Cherokee agreement.

1. Delaware treaty of 1778 (7 Stats. 13):

United States guarantees to defend Nation of Delawares and their heirs in all their territorial rights.

2. Delaware treaty of 1785 (7 Stats. 16):

Establishes *boundaries* between the United States lands and those of the Delawares.

3. Delaware treaty of January 9, 1789:

Confirms peace and friendship.

4. Delaware treaty of 1795 (7 Stats. 49):

In this the Delawares *cede* land and Delawares describe their possessions as "their country" and the United States relinquishes its rights in certain lands.

5. Delaware treaty of 1803 (7 Stats. 74):

Defines boundaries; *cedes* lands to the United States; provides for *exchange* of lands.

6. Delaware treaty of 1804 (7 Stats. 81):

Refers to Delaware land as "the country they possess." The treaty was negotiated by a commissioner plenipotentiary, thus recognizing the fact that the Delawares were an independent nation or tribe.

This treaty cedes the Delawares' right and title to certain country and recognizes the right of the Delawares to certain lands as follows:

> "The said tribe having exhibited to the above named commissioner of the United States sufficient proof of their right to all the country *which lies between the Ohio and White Rivers*, &c. . . . the said United States will in future consider the Delawares as the *rightful owners* of all the country, &c."

This shows that the Delawares were considered as *owners* in their tribal relation of certain lands. This is the highest kind of an Indian title, whether it is a fee or merely a communal right of occupancy. It certainly is an exclusive title.

7. Delaware treaty of 1805 (7 Stats. 87):

Contains a *cession* of certain lands.

8. Delaware treaty of 1805 (7 Stats. 91):

In regard to the right to *cede* certain lands.

9. Delaware treaty of 1809 (7 Stats. 113):

Provides for a *cession* of lands by Delawares.

10. Delaware treaty of 1817 (7 Stats. 160):

Agreement as to *cession* of certain lands.

11. Delaware treaty of 1818 (7 Stats. 188):

Delawares *cede* Indians lands. United States agrees to provide Delawares—

> "a country to reside in upon the west side of the Mississippi and to guarantee to them peaceable possession of the same."

While under this treaty they moved to Kansas and merely secured a country to reside in, the fact is that when they got

to Kansas they acquired a communal title of occupancy; a firm title to these Kansas lands, which they gave up when they moved to Indian Territory.

Words used in Indian treaties of such general significance must be construed to mean the same kind of title as the Indians theretofore had.

12. Delaware treaty of 1829 (7 Stats. 327):

This recites the treaty of 1818, whereby the Delawares were to get "a country to reside in west of the Mississippi as a permant residence of their Nation" and the United States—

> "pledges the faith of the Government to guarantee to the said Delaware Nation forever the quiet and peaceable possession and undisputed enjoyment of the same against the claims and assaults of all and every people whatever."

13. Delaware treaty of 1832 (7 Stats. 397):

Provides for *cession* of lands.

14. Delaware treaty of 1854 (10 Stats. 1048):

Delawares *cede* lands. President upon request will "cause the country reserved for their *permanent* home to be surveyed," etc.

15. Delaware treaty of 1860 (12 Stats. 1129):

Provides for surveys and allotment in severalty of 80 acres each, which tracts shall not be alienated except to the United States or other Delawares.

It is to be observed that the *restriction* upon *alienation* did not impair the *title* of the Delawares to the tracts.

16. Delaware treaty of 1861 (12 Stats. 1177):

Provides for *sale* of surplus lands of Delawares in Kansas, and *that individual allotments should go to the family or heirs.*

In view of these treaties, is it not fair to presume that all parties intended that the Delaware Nation, *when moving to the Indian Territory*, should get a firm and undisputed title

to the lands which they purchased, in addition to the purchase of citizenship rights?

How can it be argued that all of a sudden the Government invented a new estate for individual Indians, merely an estate for life?

The Delawares have always been worthy of consideration by the Government, and have been loyal to the Government ever since the time when William Penn, in 1681, secured the charter for Pennsylvania. The Delawares concluded a treaty with him in 1682 and granted him vast tracts of country. It was with the Delawares that the colonists, after the Declaration of Independence, made their first treaty as between Nation and Nation, dated September 17, 1778, wherein all the territorial rights of the Delawares were guaranteed protection. In the war of 1812 the Delawares opposed the great Shawnee chief, Tecumseh, and stood by the Government.

In 1829 the allegiance of the Delawares was tried when, at the dictation of the United States, they were forced to give up some 5,000,000 acres of land in exchange for a little over 800,000 acres in Kansas, in the far western country, whereby they were forced to leave some of the most fertile valleys of Indiana, and yet they still continued loyal. During the Civil War they were loyal to the Government.

There was ample reason why the Government in 1866 should declare that they need not move from Kansas until they had obtained *title* elsewhere to lands, and yet when they moved to Indian Territory they found the Cherokees had taken up all available land which had been selected (501).

During the Civil War it appears from the official reports of the agent and Commissioner of Indian Affairs that the Delawares were always faithful allies and furnished large numbers of troops.

"The Delawares are truly a loyal people," etc. (Agent Johnson's report, September 17, 1862.)

> "Of 201 Delawares between the ages of 18 and 45, 170 have volunteered and are now in the military service of the United States." (Annual report of Commissioner of Indian Affairs, 1862, p. 23.)

Their services can be seen in the following reports: Agent Johnson, September 25, 1863; Annual Report Commissioner of Indian Affairs, 1863, p. 29; Report of Agent Pratt, September 13, 1864; Annual Report Commissioner of Indian Affairs, 1864, p. 37; Report of Agent Pratt, September 25, 1865; Annual Report Commissioner of Indian Affairs, 1865, p. 43.

Is it not reasonable, therefore, to suppose that the United States intended to keep its pledges and to guarantee the Delawares good title and protection in their permanent home? What logic or reason is there in the view that all of a sudden it was proper that they should get a worthless and uncertain title?

POINT X.

Under the Second Portion of the Delaware-Cherokee Agreement There is no Question That the Delawares Acquired for Themselves and Their Children all the Rights and Immunities of Native Cherokees, Including a Right to Participate Pro Rata in the Remaining Lands and in All the Communal Funds of the Nation.

This proposition requires but little discussion. The Journeycake case is an authority for it.

From what has been said it is evident that the Delawares must first receive the 157,600 acres, and that thereafter on allotment must receive an additional amount of land equally with all other Cherokees. If they are to receive their share according to the ratio of 1 to 13.78, which existed when the agreement was made, it would seem to be within the spirit and letter of that agreement. If justice is

to be done their shares should not be cut down by the improper increase in the number of Cherokee citizens or by reason of the waste of Cherokee funds. These matters will be considered briefly hereafter.

The decree in the Journeycake case of May 22, 1893, declared the rights of the Delawares in the common property of the Cherokee Nation, and this decree enjoined the Cherokees and the United States—

> "from making any discrimination between Cherokee citizens of Cherokee blood or parentage and Cherokee citizens of Delaware blood or parentage to the injury or prejudice of the latter."

It appears that the question as to rights of Cherokee citizens by intermarriage, etc., has never been passed on.

It will be remembered that when the census was taken in 1866, it appeared there were 13,566 Cherokees and 985 Delawares, establishing a ratio as computed by the Interior Department of 1 to 13.78 (499, 432).

It was upon this basis that the Delawares bought their citizenship rights, and it would seem that upon this basis they should share in the property they bought. The increase in the number of citizens of the Nation is naturally a detriment to the Delawares, unless, as in the case of the Shawnees, these new citizens paid into the common fund their proportionate share.

Remember also that 200 Registered Delawares died before removal. They of course could not have participated in the benefits arising from the common property, although there was paid for them $24,600. This could only have been on the theory that the ratio in which the Delaware tribe should share in the remaining Cherokee lands and funds would be a fixed one, as otherwise the deaths of 200 members of the tribe ought to have been considered, and less money should have been paid. The Delawares were not allowed to increase the number of Registered Delawares under the agree-

ment of 1867, except in a particular way. Why should not the Cherokees be under a like inability to increase the number of their tribe or Nation?

However this may be, it would seem no more than fair that the Delawares should not be forced to share in the communal funds and lands of the Cherokee Nation with persons admitted as citizens who never have contributed to that common fund.

The court below held that the Cherokee Nation had a right to admit citizens; that the Delawares could not complain. If this argument is carried to its logical end, it would mean that the Cherokees might admit as citizens the whole population of the United States, and thereby cut down the share of each Delaware to an infinitesimal amount. We will consider the question of unlawful admission of citizenship in the next point.

POINT XI.

The Cherokee Nation Have No Power by the Admission of Citizens Who Did Not Contribute to the Common Fund to Cut Down the Property Rights of the Delawares in That Fund. This Would be Confiscation, and Whatever May be the Political Rights of These New Citizens They Can Not be Considered as Entitled to Share With the Delawares in the Funds and Remaining Lands of the Nation.

Numerous persons were adopted as citizens since the making of the Delaware-Cherokee agreement. It is evident that they may be citizens without having property rights.

Stevens *vs.* Cherokee Nation, 174 U. S. 488.

In article 5 of the Cherokee treaty of 1835 (7 Stats. 478), under which the Cherokee Nation has always exercised its rights of self-government, it appears that the Cherokees

were granted power to legislate in regard to their country which belonged to them or such persons as "have connected themselves with them." This did not refer to persons who might thereafter come in, and hence the Cherokee Nation was not authorized *expressly* to admit new citizens.

This court has jurisdiction to determine what the rights of the Delawares are, and naturally to determine the extent of those rights, and who shall share in the Cherokee lands and funds.

If other persons can share who are not authorized, the result will be an unfortunate one for the Delawares.

In 1886 the Commissioner of Indian Affairs (p. viii) in his annual report stated that the allotment of Cherokee lands in severalty to all citizens would give each one 228 acres.

It is estimated now that such an allotment would give each only 140 acres; thus in a few years the communal interests of Delawares were reduced by 88 acres.

While the 5th article of the treaty of 1835 did not either grant or deny the right of Cherokees to admit persons to citizenship, still evidently any such admission of citizens must be a political right merely. If the admission of new citizens gave to them rights of property injurious to those of the Delawares, this would be unconstitutional and void, for the said Cherokee treaty contains a proviso that the power of the Government or the acts done under that power—

> "shall not be inconsistent with the Contstitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with Indians."

At the time of the treaty one of the laws of Congress was section 12 of the act of June 30, 1834 (4 Stats. 730), which provided—

> "that no purchase, grant, lease, or other conveyance of land or of any title or claim thereto from any Indian nation or tribe of Indians shall be of any validity in law or equity unless the same be made

by treaty or convention entered into pursuant to the Constitution."

It can not be gainsaid that the granting by the Cherokee Nation of rights of citizenship to persons who did not contribute to the Cherokee funds, which rights were to include a right to participate in the funds, took away property from the Delawares without due process of law.

It can not be gainsaid that the conferring by the Cherokee Nation of rights to property in land upon such citizens would be a grant which was not made by treaty.

It would seem, therefore, to follow that no matter what might be the political power of the Cherokee Nation, they had no power under the United States Constitution to deprive the Delawares of their property or to make a grant of their lands except by treaty.

POINT XII.

Furthermore, it is Claimed by the Cherokee Nation that it Had a Right to Admit New Citizens to Property Rights Because of Some Amendments to its Constitution.

These amendments were void, as well as any action taken under them. They will be referred to hereafter. They were void because ratified at a mass meeting at which but few attended, and which was convened after a very short and entirely illegal and irregular notice.

A. *The amendments were irregularly adopted.*

It is in evidence that the meeting at which the amendments were adopted was convened after notice of only one or two weeks, and only about 300 persons out of a population of 13,000 were present. The amendments were carried by a *viva voce* vote, an illegal method; no proclamations were issued, as required by the constitution; no six months' notice, as required by the constitution (see record, 421–422, 419) and see stipulation that four other citizens, in ad-

dition to Muskrat and Meigs, would testify to the same effect (423).

We make no collateral attack upon the Cherokee constitution. This is a point raised directly in a litigation where the Cherokee Nation is a party.

B. *Who were the persons thus illegally admitted?*

1. *The North Carolina Cherokees.*

They paid nothing. They had remained East when the main body of the Cherokees moved West. They had severed their connection with the tribe and were paid for their interest in tribal property and became citizens of the States.

Cherokee Trust Fund Case, 117 U. S. 288.

According to the foregoing decision such Cherokees lost their rights of citizenship, and their interest in the property of the Nation had been paid to them. They had, therefore, no longer any right to claim a share in Cherokee property by reason of birth or otherwise.

If the Nation desires to admit them as citizens having political rights we do not object. They could not acquire, to the detriment of the Delawares, property rights. They had lost their rights of citizenship, and could not, therefore, be said to come within the jurisdiction of persons formerly citizens, as was intended in section 2, article 1, of the constitution of the Nation, wherein it is provided—

> "Whenever any citizen shall remove, with his effects, out of this Nation and become a citizen of any other government, all his rights and privileges as a citizen of this Nation shall cease: Provided, nevertheless, that the national council shall have power to readmit by law to all the rights of citizenship any such person or persons who may at any time desire to return to the Nation on memorializing the national council for such readmission."

Persons intended to be benefited by this provision were citizens as of the time when the constitution was adopted

but the North Carolina Cherokees had separated under the treaty of 1835. They had never been citizens in the Nation when it lived west, hence they were illegally admitted, even under the constitution.

The attention of the court is invited to complainant's Exhibit S, especially the act of union contained on pages 7 and 8 of said exhibit, as showing the conditions on which the eastern Cherokees were to be admitted and enjoy the privileges of citizenship in the Cherokee Nation. It will be observed that by that act of union it was provided that all of the public lands of the Cherokee Nation, east or west—

> "with all other public interests which may have vested in either branch of the Cherokee family, whether inherited from our fathers or derived from any other source, shall henceforward vest entire and unimpaired in the Cherokee Nation, as constituted by this union."

By this agreement between the eastern and western Cherokees every eastern Cherokee who is permitted to enjoy the benefits of citizenship in the Cherokee Nation must relinquish all his separate right in the property belonging to the eastern Cherokee Indians, for the benefit of the citizens of the Cherokee Nation, as formed by this union.

Complainants have alleged in their petition that the Cherokee Nation is claiming and entitled to larger sums of money from the United States on account of the failure of the Government to carry out its treaty obligations, but the attention of the court is invited to the fact that there is now pending in Congress and in this court, by reference from Congress, a claim of the eastern Cherokees, both those residing in the Cherokee Nation and those residing in North Carolina and elsewhere in the east, whereby said eastern Cherokees claim against the United States in separate right a large sum of money, amounting to $1,100,000, with interest from July 12, 1835.

By this claim of the eastern Cherokees it will be seen that

eastern Cherokees who have been admitted to citizenship in the Cherokee Nation by acts of council, which have been erroneously described as "readmissions," now refuse to recognize the right of the Nation to their separate property, and are claiming it as against the Nation as well as against the United States. This applies to those eastern Cherokees who are citizens of the Nation under the act of union referred to. And the claim is made notwithstanding their agreement that all of their public interests shall be vested entire and unimpaired in the Cherokee Nation, as constituted by such act of union.

The Delawares urge that, should this claim be paid, it should be paid to the Cherokee Nation, and that they should participate in the benefits thereof.

It is evident, then, that the admission of the North Caroline Cherokees is injurious and detrimental to the Delawares.

2. *The admission of other persons not of Cherokee blood.*

Complainant's Exhibits K and L show that many persons not of Cherokee blood have been admitted by act of council.

The property of the Nation is common property; the Delawares acquired interests by treaty and have paid their pro rata share. These new citizens have paid nothing. The Cherokee treaty of 1846 provides that the Cherokee lands shall be secured "to the whole Cherokee people for their common use and benefit."

What right, then, has the Nation, in defiance of treaty obligations, to pass acts which in effect confiscate property?

3. *Various white or intermarried citizens have been illegally admitted.*

This can be observed by examining the complainant's Exhibit S (297, etc.). This exhibit is not printed in full, but contains the laws of the Cherokee Nation and of legislation in regard to intermarriage. It appears that citizenship is

not granted directly to intermarried whites. At section 665 there is the phrase "adopted citizens of the Cherokee Nation by marriage" etc., and section 666 provides in regard to the rights of persons intermarrying.

Taking these expressions in the intermarriage law in connection with complainant's Exhibit K, showing how many of these people are enrolled as citizens, being intermarried whites, it is evident that the intermarried whites claim rights of property. Whether they do this or not, the court should state, in determining the rights of the Delawares, whether or not they can share in the common property. There is no question that these white citizens do claim such rights.

Congress by legislation, construed by this court in Stephens *vs.* Cherokee Nation, 174 U. S. 488, seems to recognize the fact that there might be citizens of the Cherokee Nation who are not entitled to property rights. This court says:

> "It may be remarked that the legislation seems to recognize, especially the act of June 28, 1898, a distinction between admission to citizenship merely and the distribution of property to be subsequently made, as if there might be circumstances under which the right to a share in the latter would not necessarily follow from the concession of the former."

These white citizens and others admitted have merely political rights.

C. *The amended Cherokee constitution is invalid.*

The Cherokee council claim this right to admit persons to citizenship under provisions of the amended constitution; that is, under provisions of what is printed in the laws of the Cherokee Nation as amendments to the constitution, especially the provisions of section 5 of said alleged amendments, as follows:

> "All native born Cherokees, all Indians and white persons legally members of the Nation by adoption,

> all freedmen who have been liberated by voluntary act of their former owners, as well as free colored persons who were in the country at the commencement of the rebellion, and are now resident therein or who may return within six months from the 19th day of July, 1866, and their descendants, who reside within the limits of the Cherokee Nation, shall be taken and deemed to be citizens of the Cherokee Nation."

The question whether or not the words "all Indians and whites legally members of the Nation by adoption" conferred upon the national council the power to adopt Indians or whites, if valid, need not here be discussed further than to say that it is very doubtful whether these words could be so construed as to confer that power on the Cherokee council. A more serious question is the validity of the so-called amendments themselves. The constitution of the Cherokee Nation provides for the amendment thereof, in article 6, section 10, as follows:

> "The national council may propose such amendments to this constitution as two-thirds of each branch may deem expedient, and the principal chief shall issue a proclamation directing all civil officers of the several districts to promulgate the same as extensively as possible within their respective districts at least six months previous to the next general election; and if, at the first session of the national council, after such general election, two-thirds of each branch shall, by ayes and noes, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this constitution: *Provided*, that such proposed amendments shall be read on three several days in each branch, as well when the same are proposed as when they are ratified" (Rec. p. 305).

It is not necessary to look further than the alleged amendments themselves, as proclaimed by the principal chief of the Cherokee Nation (page 307 of the record) to see that this provision was not followed in their adoption. It will be

seen there that the requirements of the constitution for its amendment were not only not complied with, but that there was absolutely no attempt to comply therewith. The so-called amendments were proposed in the council of the Cherokee Nation between the dates of July 19, 1866, and November 26, 1866, covering a period of four months. This is shown on the face of the record itself, so far as the amendments may show it; but as a matter of fact, said amendments were proposed some time during October, 1866 (Rec. pp. 417–421. Depositions of Henry C. Meigs and David Muskrat).

According to the constitution, said amendments should have been proclaimed for six months prior to the next general election of council, so that the people might know what was proposed, and a campaign might be carried on and a new council elected, which new council might again take up and pass on said amendments before they should become operative as part of the constitution of the Cherokee Nation. It might be thought that as a matter of fact these amendments were passed on by all of the Cherokee people, as the proclamation recites that they were approved of at a general convention of the people on the 28th day of November, 1866. The fact is, however, that after about two or three weeks' notice these amendments to the constitution were considered at a mass meeting of a few people, consisting of about 300 men and some women and children, altogether about 1,000 persons, who met together in the court house square in Tahlequah on the 26th day of November; had read to them these proposed amendments, which were declared to be adopted by the convention (see depositions of Meigs and Muskrat, Rec. p. 417, *et seq.*, and stipulation between the parties that Doc. Cunningham, Daniel Gritts, Joab Scales, and Houston Benge, all native Cherokees, and men of reputation, would testify to the same effect as Meigs and Muskrat on this question).

Taking the so-called amendments to the constitution as

they appear in the light of depositions introduced on behalf of complainants, it will be very clearly seen that said amendments not only were not adopted in accordance with the provisions of the constitution of the Cherokee Nation relating to amending the same, but that they never received the sanction of any considerable number of the citizens of the Cherokee Nation such as entitled them to respect. The total citizenship of the Cherokee Nation at that time was over 13,000 and there were present at this meeting only about 300 of the qualified electors of the Nation. And these only voted on the amendment, if they voted at all, by mere silence or some sign of assent to what the leaders presenting the amendments were saying.

This is not a collateral attack on the Cherokee Nation, but is a direct attack in a litigation directly with that Nation. It is necessary to determine this question so as to ascertain what amount or share the Delawares will have in the communal funds of the Cherokee Nation.

The position we have taken is sustained by an important authority.

D. *Ainsley* vs. *Ainsworth, decided in the United States Court of Appeals for the Central District of Indian Territory*, 69 S. W. Rep. 884, Sept. 25, 1902.

The court held that the Choctaw Nation could not by a constitutional provision give to some of its citizens an irrevocable license to mine minerals to the exclusion of other citizens of the Choctaw and Chickasaw Nations, for the reason that the Chickasaw Indians had an interest in the question and had not been consulted. The court stated that inasmuch as the Chickasaws, with the consent of the United States, had bought an interest in the Choctaw lands, the Choctaw Nation could not, without the consent of the Chickasaws, grant mineral rights to individuals. This provision of the Choctaw Constitution granting indefeasible rights in minerals was held to be invalid for two reasons:

1. It was an appropriation and *sale* of realty without the consent of the Chickasaws.

2. It was in violation of a treaty providing that the lands should be held in common "so that each and every member of either tribe shall have an equal undivided interest in the whole."

This provision of the constitution was held void, therefore, as in conflict with the treaty, and also a certain act of the Choctaw council conferring title to the discoverer of minerals. It was held that the act was void because the council had no power to convey lands. The title to the lands is vested in the people in common.

This is a very important decision, because the situation of the Chickasaws with reference to the Choctaws is the same as that of the Delawares with reference to that of the Cherokees.

In brief, the question for decision is this: Can the Cherokee Nation, after making a solemn treaty with the Delawares, giving them certain specific rights in the lands and funds of the Nation, diminish or cut down those rights by acts which in effect grant undivided interests in such funds and lands to persons who did not contribute to them? We think the answer should be in the negative.

POINT XIII.

Vast Sums of Cherokee Funds Have Been Misappropriated or Squandered or Stolen Without the Consent or Participation of the Delawares.

These funds should be charged off to the Cherokee Nation so that Delawares may participate in the Delaware funds as though such stealing had not occurred.

The court below took the position that the maladministration of funds was a political question and the court could not go into it, but the Delawares, as members of the Nation, were bound by its acts.

We think the court should consider fully the fact that Congress intended to have fixed once for all just what property the Delawares were entitled to. This question necessarily involves a mathematical proposition. How many

Delawares are there? How many Cherokees? What are the funds and lands involved, and shall the Delawares suffer because the Cherokee council, against their protests, dissipated the funds to which the Delawares had contributed?

The record is full of evidence showing the misappropriation of vast sums of money, with respect to—

A. The so-called Whitmire steal;

B. Various frauds in the auditor's office, and

C. Other wasteful and unlawful or fraudulent disposition of the common funds.

If this court shall agree with the court below that the question is merely a political one, it will not be necessary to consider the evidence. If this court, however, shall hold that the Delawares must not suffer because of these misappropriations, then an accounting will be necessary to determine the precise amount of these stealings.

We will not, therefore, burden the court with the details of the evidence until the court decides the questions of law involved.

POINT XIV.

From the Discussion Which Has Been Had in the Preceding Portions of This Brief We Respectfully Submit That We Have Beyond Peradventure Established the Following Facts:

1. That prior to April 8, 1867, the Delaware Indians were living in the State of Kansas, on lands owned by them in severalty, by absolute title, being allotments of approximately 80 acres apiece, with the right of inheritance by their heirs in case of the death of any of the several owners of the land.

2. That prior to said time and at the instance of the United States Government, which desired them to remove to the Indian country south of Kansas, delegations were sent out by the Delawares to seek a new location for the Indians,

having in contemplation the sale of their homes in Kansas and the purchase of new homes in the Indian Territory, which at that time embraced all of the territory now within Oklahoma, except the tract of country formerly known as "No Man's Land," lying north of the Panhandle of Texas. These delegations examined several tracts of land ceded by the various treaties of 1866 to the United States by the Choctaws, Chickasaws, Creeks, and Seminoles and also lands in the Cherokee Nation, both west and east of the 96 meridian, and selected a tract of land east of that meridian, within the Cherokee home reservation.

3. That the Delawares never had in contemplation any intention of making other arrangements so far as related to the purchase of new homes than the purchase of the land for these homes outright, to be owned by them free of any right of property in any other nation of Indians, the preference of the Delawares being to have the land they purchased for the new homes in a compact body, one tract with definite boundaries, separate from the lands of any other Indian tribe, to be allotted to the individuals as their Kansas lands had been allotted.

4. That in the negotiations with the Cherokees it was found impracticable (on account of the unwillingness of the Cherokee Nation) to cut off from their reservation and grant a tract of land within their home tract, or to cede their jurisdiction over the same, as a tract could not be found in the Nation sufficiently large that did not embrace settlements by Cherokees.

5. That the Delawares were unwilling to go into the Cherokee Nation unless they could purchase outright the land for the new homes contemplated in their treaty of 1866, to be theirs independent of any right of property in the Cherokee Nation or individual Cherokees, and the parties, therefore, did the next best thing to what the Delawares desired, and that was to arrange for the sale by the Cherokee Nation and the purchase by the Delawares of 160

acres of land for each registered Delaware, to be selected by the Delawares anywhere in the Cherokee Nation not interfering with the selections that had already been made by the citizens of the Nation. The jurisdiction of the Cherokee Nation over these lands for governmental purposes was preserved and the Delawares were restricted from alienating or disposing of said lands except in accordance with the constitution and laws of said Nation.

6. That it was understood by the Delaware and Cherokee representatives, who negotiated this agreement, that the Cherokees would have no right of property in the lands purchased by the Delawares for $1 per acre, but should have the right of government over said lands as being within their public boundaries.

7. That the Delaware and Cherokee representatives also understood that, by said agreement, the Delawares should have, in addition to said lands purchased by them in absolute property, also all the rights, privileges, and immunities of native Cherokees in the common property of that Nation, other than the lands purchased by the Delawares as aforesaid, in consideration of the further payment of $121,824.28 by said Delawares, as their proportion in the ratio of 1 to 13.78 in the funds of said Nation.

8. That it was intended by the parties to the Delaware-Cherokee agreement, by the language used, and said agreement provided that the Cherokee Nation thereby sold and granted to the Delawares 160 acres of land for each and every Delaware whose name should appear on a certain register described therein, at a consideration of $1 per acre, to be paid by the Delawares to the Cherokee Nation; in all, 157,600 acres.

9. That in addition to the land so sold as above described each and every Delaware who moved into the Cherokee Nation under said agreement and settled there also became entitled to all the rights and immunities of native Cherokees in and to the common property of said Nation, including the

land of said Nation other than that sold to the Delawares as aforesaid, and the funds of the Nation held in trust by the United States, upon the compliance by the Delawares with the condition of payment into the funds of the Nation, of a proportionate share of said funds in the ratio of 1 Delaware to 13.78 Cherokees, as provided therein.

10. That there were on the register of Delawares referred to in the agreement 985 names, representing Delawares who had indicated their desire and willingness to move to the Cherokee Nation, and the aggregate quantity of land purchased by the Delawares from the Cherokee Nation, to be paid for at $1 an acre, was 157,600 acres.

11. That the Delawares fully complied with all of the provisions of the said agreement of April 8, 1867, by the payment on May 21, 1869, of the sums of $157,600, being the amount due for the lands purchased by the Delawares from the Cherokee Nation, and $121,824.28, being the amount due under the agreement for the rights of citizenship acquired by the Delawares who removed to the Cherokee Nation.

12. That the Delawares have selected and improved and are now occupying 157,600 acres of land in the Cherokee Nation, being the lands described in the testimony of Horace M. Adams (Rec. p. 339 et seq.), as shown on Complainant's Exhibit BB to FFFFF, both inclusive.

13. That the Delaware Indians have continued to maintain a separate tribal organization in the Cherokee Nation for the purpose of managing and administering their separate tribal property, in which the Cherokee Nation had no interest and over which the said Nation had no control. That said tribal organization until 1895 was the continuation of their ancient tribal government of chief and councilors; and that since 1895 said separate tribal organization has been administered by a business council or committee of five men elected by the people.

14. That the Cherokees have by the illegal admission of

persons not entitled to citizenship in the Cherokee Nation, without consideration therefor, attempted to decrease the per capita interests of the citizens of the Nation to the damage of the complainants, for which said Cherokees should account.

15. That the communal funds of the Cherokee Nation have been wastefully, improvidently and negligently disbursed to persons not entitled to participate therein, and Cherokees of high official position in the Nation have wrongfully and fraudulently received large amounts of money from the Cherokee Nation's common funds without consideration or services whatsoever to the Cherokees therefor, to the damage and hurt of the complainants, for which sums the Cherokees should account.

These fifteen propositions we think we have established without any question, and incidentally to them there are other important propositions of fact or of law which we think are likewise established beyond peradventure.

16. A proper construction of the Delaware and Cherokee treaties of 1866 and the agreement of 1867, without resorting to any parol evidence, shows that the contentions we have made are well-founded with respect to the interest of the Delawares, not only in the 157,600 acres of land, but in the other lands and funds of the Cherokee Nation.

17. The Government of the United States and the Cherokees themselves, as shown by their records and official acts, have recognized the title of the Delawares, as we claim it.

18. The United States, by its treaties with the Delaware Indians, have guaranteed that the Delawares shall be protected in their property rights, and it appears that the Delawares have always owned their lands and that they have always been loyal friends of the Government, and have carried out their treaty obligations.

19. The parol evidence which we have given to explain the understanding of the parties is competent, relevant, and admissible.

20. The complainants are properly in court and have capacity to sue according to the provisions of the Curtis act, section 25.

21. With respect to the outside lands and funds of the Cherokee Nation, the Delawares are entitled to share in the original ratio of 1 to 13.78.

22. If the court does not agree with us on this last proposition, then the Delawares are entitled to share pro rata with all the Cherokees, who are under the constitution and laws of the Cherokee Nation properly citizens of such Nation, with respect to such outside lands and funds.

23. This court has jurisdiction to determine who are lawful citizens of the Cherokee Nation, and for that purpose should order a census to be taken to determine the numbers of such citizens. This has been done in other cases.

24. This court has further jurisdiction as incidental to its general powers to take an accounting with respect to the misappropriation and unlawful disposition of the national funds of the Cherokee Nation.

25. This court should determine also that the Delawares are entitled to share in a proper proportion in any further moneys which in the future may be recovered or paid over to the Cherokee Nation.

26. This court should decree, as prayed for in the petition, that a proper deed of conveyance be executed by the Cherokee Nation to vest the Delaware Indians with full title to the said 157,600 acres of land, which property then the Delaware council can properly allot, according to its rights and the rights of the individual Delawares.

27. Upon the death of a registered Delaware, the lands occupied in severalty by him, comprising a part of the 157,600 acres, did not revert to the Cherokee Nation, but passed by descent to his heirs in or for occupancy and became a part of the common holding of the *Delawares*. In no event did such lands revert in any way so as to become a part of the Cherokee national lands.

28. The Cherokee national lands, outside of the 157,600 acres, are held by all the lawful Cherokee citizens, including the Delawares, as tenants in common, in the same way as the lands of the Choctaws and Chickasaws are held, as appears from the decision in the case of Ainsley *vs.* Ainsworth, which we have heretofore considered.

29. The Delawares have not by any participation in the government of the Cherokee Nation estopped themselves from objecting to the illegal admission of citizens and the improper waste of funds.

The facts in this case are such that the court should exercise every power which may be necessary to accomplish a full and just determination of this controversy between the parties, so as to avoid further litigation.

POINT XV.

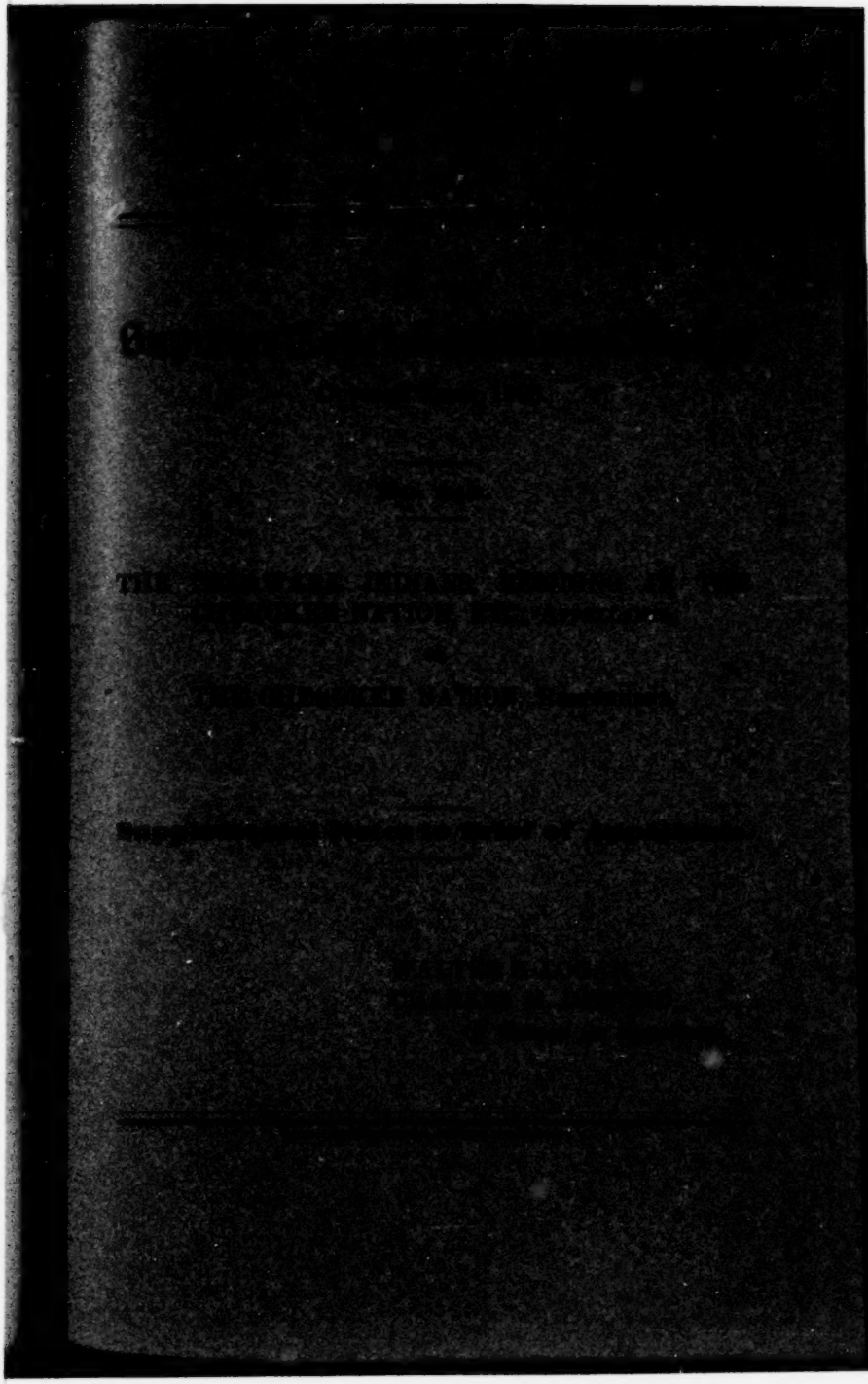
The Decree of the Court Below Should be Reversed and This Court Could by Its Own Decree Render Judgment in Accordance with the Claim of the Delawares as Set Forth in the Preceding Point, and Should, if Necessary, Order a Census to be Taken and an Accounting to be Had, in Order That the Question of the Reciprocal Rights of the Delawares and Cherokees May Forever be Set at Rest.

Respectfully submitted,

WALTER S. LOGAN,

CHARLES M. DEMOND,

Of Counsel for Appellants.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 240.

THE DELAWARE INDIANS, RESIDING IN THE CHEROKEE NATION, ETC., APPELLANTS,

vs.

THE CHEROKEE NATION, RESPONDENT.

Supplemental Notes to Brief of Appellants.

1. The respondents in their brief, at page 7, section 5, referring to the ~~treaties~~ agreement between the Delawares and the Cherokees (which they improperly designate as a treaty), declare that the *habendum* clause in said contract provides for continual ownership and occupancy of the land, "but expressly limits this to the registered Delawares, and omits entirely all reference to their heirs and assigns, which are words absolutely necessary, at common law, to a title in fee simple."

The answer to this is evident. The parties to the Cherokee agreement were negotiating a contract, which in its effect embraced other matters than the fixing of the status of the lands which were purchased under it. As stated in the brief of the appellants, heretofore filed herein, this contract was not a patent, or even a deed in form, but was an agreement which, among other things, included a bargain and sale of certain lands, and it was not the intention of the parties,

and was not by them deemed necessary, that it should be in the form of a deed. Indeed, in none of the treaties or agreements between the United States and the various tribes or bands of Indians, with which dealings have been had respecting their lands, with perhaps a solitary exception, in the case of the Cherokee patent of 1838 (which contains no limitation to heirs or assigns), has any instrument passed between the contracting parties having the formal parts of a deed, and this effort to put a construction upon the contract in question different from that which was the manifest intention of the parties, on account of the lack of formal words such as are deemed necessary to a deed at common law, is only an effort to obscure the main facts by a discussion of technicalities, which have not in this case, and never have had in any similar case, any force whatever.

The assertion of counsel for respondent, that the Delawares have "not sustained a tribal government since their removal," is dehors the record, and is not true in fact, while the assertion that "no man can serve two masters, neither can a Delaware be a member of two nations," when applied to the conditions surrounding the Delawares in the Cherokee Nation, is the most idle sophistry.

Why could not the Delawares maintain a separate tribal organization within the Cherokee Nation? Was not this a condition contemplated and provided for by the Cherokee treaty of 1866? Does not the Cherokee Nation maintain a tribal organization within the United States? Do not all the States maintain complete political organizations within the United States? Do not counties and cities maintain political organizations within the several States far more complex, formal, permanent, and independent than Indian tribal organization? Would there be anything extraordinary about the Delawares maintaining a tribal organization within the Cherokee Nation, not inconsistent or incompatible with their obligations to the Cherokee Nation under

their contract? Do not the Choctaws and Chickasaws exist as one community as to their lands and certain relations with the United States, and at the same time maintain separate tribal organizations?

Such a contention is too idle to merit serious discussion, and, as a matter of fact, the assertion of respondent's counsel is not true, for the Delawares *have* maintained, from the time of their settlement in the Cherokee Nation, a complete organization; have held separate elections; have had a chief and other tribal officers, and have had numerous councils, whose transactions have been recognized by the United States, and whose acts have been the basis of financial adjustment with the United States involving immense sums of money. The case of Journeycake against the United States, to which respondent's counsel have made frequent references in the argument, was brought in the Court of Claims, under authority of Congress, by Charles Journeycake, *principal chief of the Delaware Indians.* Charles Journeycake was elected chief of the Delaware Indians at an election held by the Delawares after their arrival in the Cherokee Nation, and remained such chief till the time of his death, in 1894. The funds of the Cherokee Nation remaining invested with the Government after the purchase of their lands in the Cherokee Nation, amounting to nearly $1,000,000, were paid by the United States to the Delawares in 1891–1893, pursuant to resolutions passed at certain councils held by the Delaware Indians, whose proceedings were adopted and approved by the Department of the Interior. The act of Congress, under which the case at bar was brought, in the Court of Claims, provides in section 25 thereof "that before any allotment shall be made of lands in the Cherokee Nation, there shall be segregated therefrom, by the commission heretofore mentioned, in separate allotments or otherwise, the 157,600 acres purchased by the *Delaware tribe of Indians,*" etc.

After the death of Charles Journeycake, in 1895, the

Delaware Indians were requested by the Department of the Interior, instead of electing another principal chief, to elect a business committee, who should be the governing body of said tribe for all purposes, and in response to such request said business committee was elected, and is one of the complainants in the suit at bar. Councils have been repeatedly held, even up to within the last few months, by the Delaware Indians, *as a tribe or band*, and their action has received the formal approval of the Department of the Interior.

If any of this statement is outside the record, it is no more so than the assertion in respondent's brief, to which it is a reply and by which it is made necessary.

The contention that the Delaware treaty of July 4, 1866, and the Cherokee treaty of July 19, 1866, are not to be considered in this case, in construing the Delaware contract of 1867, is so manifestly erroneous that it seems hardly worth discussing. Under what authority could these two tribes have entered into a contract affecting their lands and funds held by the Government, save that of these two treaties? What right had the Cherokees to sell except that conferred in the treaty of 1866, and what right had the Delawares to buy except under their treaty of July 4, 1866? What right had the Treasury Department of the United States to transfer the trust funds of the Delawares to the trust funds of the Cherokees save the authority contained in these two treaties?

It has been repeatedly held by the courts, and has been the unbroken practice of the Government throughout all of its dealings with the Indians, that the funds of an Indian tribe can not be paid even to the Indians for whose benefit the fund is held, except pursuant to the specific direction of Congress, either in an enactment for that purpose or by the ratification of some treaty containing provision for such disbursement. How then could the trust funds of the Delawares be paid over to the Cherokee Nation except for the

authority contained in the treaty of July 4, 1866, providing for a purchase by the Delawares, and the treaty of July 19, 1866, providing for a sale by the Cherokees?

It is also the unbroken and undisputed current of all the authorities that in the construction of a statute or a contract all the surrounding circumstances and history leading up to the execution of the instrument itself are to be taken into consideration in determining the intention of the parties.

Hahn *vs.* United States, 107 U. S. 402.
U. S. *vs.* Recorder, 1 Blatch. 218.
Polk *vs.* Hill, 2 Overton, 118.
Smith *vs.* Townsend, 148 U. S. 490.

The treaty of July 4th, 1866, with the Delaware Indians created two classes of persons, first, those who retained their tribal autonomy and removed to the Indian territory, and second, those who ceased to be Delaware Indians, in the tribal sense, who filed their declarations of intention to become citizens of the United States (and who afterwards did so), who received patents to their lands in Kansas, and to whom was distributed their share of the tribal fund, amounting to between twelve and thirteen hundred dollars each. If it can be contended that the class out of whose common fund the tract of land in the Cherokee Nation was purchased was no longer a tribe, and consequently incapable of holding communal property, and that the land purchased was not purchased in common or for communal use, then there is no escape from the proposition that the balance of the common fund not used for the purchase of land was not a common fund, but also belonged to the individual registered Delawares, share and share alike. This is clearly *not* the construction placed upon it by the Government, for in 1891–1893 the balance of that fund, amounting to nearly a million dollars, was paid out by the Government, *not* to the original registered Delawares, but to the whole

Delaware tribe, *per capita*, being the registered Delawares, and their descendants, after being held in the treasury for twenty-five years as the communal fund of the Delaware tribe. So if the contention of the respondent is true, that the land purchased out of this tribal fund did not become tribal land, then this fund was paid to these people by the United States improperly.

Not only does the decree in the court below wholly fail to carry out the purpose of the jurisdictional act, but the finding of the court, upon which the decree is based, creates a condition which certainly never could have been contemplated, and can not be tolerated, and which is impossible of adjustment.

There are still living about 212 original registered Delawares. These are the ones who, at the time of the purchase of the tract of land in question, were infants or very young persons; about all of those who were of mature years having since died. Most of these 212 persons still have a long expectancy of life. The Cherokee Nation, as a political organization, will be dissolved during the next two years; a territory and then a state will be organized out of the territory now composing the Indian Territory. To whom, then, will these 212 quarter sections of land revert, when the life estates of the registered Delawares, now entitled to possession, shall die? There is nothing in either the treaty between the Delawares and the United States, or the Cherokees and the United States, or in the Delaware-Cherokee agreement, or in any law of the United States, which makes any provision as to what shall become of the lands of the registered Delawares at the expiration of any life estate. The reason for this is not far to seek, for this claim that by the contract of 1867 the Delawares took a life estate only, is an afterthought, and was not in anybody's mind when that contract was entered into, nor has it been in anybody's mind when any of the subsequent legislation has been enacted; for from the day when that contract was under

negotiation down to the beginning of this suit the uninterrupted current of all the declarations of the officers of the United States, of the Executive Departments, which have had occasion to refer to the subject at all, and of the Cherokee Nation and its officers, show, beyond the possibility of a question, that it was the understanding of all that the Delaware Indians, by the agreement of 1867, bought absolutely all the right, title, and interest of every nature or kind, in and to the 157,600 acres which the Cherokee Nation at that time possessed, and subject only to the possible reversion to the United States, which was expressed in the patent delivered to the Cherokee Nation in 1838.

As shown by the respondent's counsel in their brief, the Delaware-Cherokee agreement of 1867 consists of two parts, the first of which provides for the purchase of 157,600 acres of land at one dollar per acre, and follows strictly the direction contained in the Cherokee treaty of 1866; the second part for the payment into the treasury of the Cherokee Nation of a sum of money, bearing the same relation to the national fund of the Cherokee Nation that the number of Delawares, about to be incorporated, bore to the whole number of Cherokee citizens. This second payment amounted to $121,824.28, and was commonly called the "equalization fund," from the fact that it was paid into the national treasury in that particular amount, in order that the per capita fund of the Cherokee Nation should not be disturbed by the incorporation of the Delawares among them.

There is and can be nothing in the contention that because the language of the Delaware-Cherokee contract of 1867 provided that the Cherokees should sell to the Delawares a quantity of land "in the aggregate equal to 160 acres for each individual of the Delaware tribe," etc., that the contract of sale was 160 acres each to the individual Delawares thereafter to be enumerated upon a [illegible] in list. Language of this kind will be found in numerous treaties

and agreements between the United States and various bands or tribes of Indians, and it has been uniformly held by this court and by the departments that sales of this character were *en bloc*, and that the expression of so much land to each person was simply the unit of measure by which the amount of land to be conveyed should be determined.

It will be noticed that in the 16th article of the Cherokee treaty of 1866 it is provided that "the United States may settle friendly Indians in any part of the Cherokee country west of 96th degree, to be taken in a compact form, in quantity not exceeding 160 acres for each member of said tribe," etc. It was under this provision that the Osages, Pawnees, Kaws, Ottoes, and other bands were settled in the Indian Territory and took their reservations in bulk, the unit of measure thus provided simply being used for the purpose of determining the quantity of land that should be included within the respective purchases.

By article 19 of the Choctaw treaty of 1830 it was provided that—

> "children of the Choctaw Nation residing in the Nation, who have neither father nor mother, a list of which with satisfactory proof of parentage and orphanage being filed with the agent in six months, to be forwarded to the War Department, shall be entitled to a quarter section of land, to be located under the direction of the President, and with his consent the same may be sold and the proceeds applied to some beneficial purpose for the benefit of said orphans."

In Bates *vs.* Aven, 60 Miss. 955, the court held that—

> "when the lands were selected, as contemplated by the treaty, the title to the whole vested in the United States for the benefit of the orphans *as a class*, and no particular orphan acquired title to any particular tract thereof," etc.

This question seems to be so completely settled by the decision of this court in the United States *vs.* The New

York Indians (173 U. S. 471), that any further discussion is quite out of place. In that case the court says:

> "The second article of the treaty indicates that the grant was made upon the basis of 320 acres for each inhabitant, the recital being '320 acres for *each soul* of said Indians, as their numbers are at present computed,' but the grant was not of 320 acres for each soul, but of a tract of land *en bloc*."

How perfectly similar is this language to the language of the Delaware-Cherokee agreement of 1867. In the New York Indian case the language was "320 acres for each soul of said Indians." In the case at bar the language is, "a quantity of land . . . in the aggregate equal to 160 acres for each individual of the Delaware tribe," the only difference being that the intent to sell a tract of land in a body is more clearly expressed in the Delaware agreement than in the case of the New York Indians, for in the former case the expression is "a quantity of land *in the aggregate equal to 160 acres*," thereby showing that it did not intend 160 acres to each individual, but a quantity of land equal to it.

Indeed, it may be said that this method of determining the quantity and extent of grants to Indian tribes and bands has been quite the rule in all of our transactions with the Indians, and that the uniform and uninterrupted construction by the departments of the Government, as well as by the courts, in cases where the questions have come before the courts, has been that such grants are grants to the tribe *en bloc* and not to the individual members thereof.

If the construction of the agreement in question, which is contended for by the respondent, should prevail, it would reduce the first part of this agreement to an absurdity, and would rob the Delawares of all motive for entering into it, and of all consideration under it; for it has been shown, in the principal brief for appellants, and is not susceptible of contradiction, that as long as the lands of the Cherokee

Nation continue to be held in common the payment of this equalization fund secured to the Delawares the right to select, occupy, and use any land in the Cherokee Nation not already in the occupancy of a Cherokee, without limit as to time, place, or amount, and under the Cherokee law he could not be disturbed in such possession and was the absolute owner of all improvements that he might make. That for the payment of this equalizing fund he acquired all of the property rights of a native Cherokee was decided by this court in the case of the Cherokee Nation against Blackfeather (155 U. S. 218), commonly known as the Shawnee case, the Shawnees having paid in an equalizing fund only, and not having purchased any specific lands, and under this payment, by the decision referred to, they are now being allowed the same amount of land as native Cherokees. So the Delawares had nothing to gain by the purchase of 157,600 acres so long as the land remained in common, if the contention of respondents is correct that by such purchase they acquired a life estate only. Then, under this contention, what did they get for the payment of $157,600, which was largely in excess of the amount paid for equal rights or equalizing purposes? Simply, as counsel for respondents assert, a privilege, running to those surviving at the time the lands should be divided in severalty, to occupy 160 acres of land, during their lifetime, instead of receiving an allotment of 110 acres, to them and their heirs forever, as acquired by the Shawnees under the payment of the equalizing fund only! (Act of July 1, 1902.—Public 241.) Thus creating, by the payment of this large additional amount of money, a condition far worse than would have been the situation had this amount never been paid!

That 985 Delawares should each pay $160, being more than the whole title to the land was worth at the time, in order that the survivors of them should enjoy this small privilege, is a proposition so monstrously absurd upon its face, and so inconceivable for any sane man to entertain, that its

mere statement is its sufficient refutation. The excuse for it, set out on page 21 of respondents' brief, that the "Delawares had the right of personal individual selection to choose the best lands out of the millions of acres" is no answer at all, for, as just shown, they had this same identical right of selection, under the second part of their contract, without any reference to the payment of $1 per acre, and the payment of this $1 an acre does not enlarge their privilege in the estimation of a hair.

There is no escaping the conclusion that if the contention of the respondent could prevail, it would result that all the benefits, privileges, and rights of the Delawares were purchased for the hundred and twenty-two thousand and odd dollars—the equalization fund—and that for the larger sum of $157,600 they acquired worse than *nothing*.

To support the contention of the respondents makes the whole first part of the contract of 1867 an absurdity, and puts the Delawares, who entered into it, in the light of wanting even the first rudiments of business sense, and involves the adjustment of the affairs of the Delaware people and the Cherokee Nation in inextricable difficulty, while the contention of the appellants gives meaning and vitality to the contract of 1867, and to every part of it, and renders the adjustment of the rights of the parties to this suit, in respect to the lands in the Cherokee Nation, simple, easy, and natural, and free from any complications whatever.

Respectfully submitted.

WALTER S. LOGAN,
CHARLES M. DEMOND,
Of Counsel for Appellants.

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Office Supreme Court
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JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1903.

THE DELAWARE INDIANS, ETC., *Appellants.*
vs.
THE CHEROKEE NATION, *Appellees.*
No. 240

Exhibits to brief of appellants as requested by the court, being extracts from reports of the Commissioner of Indian Affairs, and

1. **Delaware Treaty of 1860.**
2. **Delaware Treaty of 1866.**
3. **Cherokee Treaty of 1866.**

NOTES IN RESPONSE TO QUESTIONS BY THE COURT.

NOTE 1. The proposition has been stated to the court by counsel for respondent, that in order for the court to hold that the Delaware Indians were incorporated with the Cherokees under the second clause of Article 15 of the Cherokee Treaty of July 19, 1866, it would have been necessary that the price agreed upon, and paid by the Delawares for their lands, should have been included in estimating the National Fund of the Cherokees, under said agreement, and the statement is made that the $157,600 paid by the Delawares to the Cherokees was not included in estimating the National Fund of the Cherokees.

Both parts of this proposition are incorrect. The contention of counsel is based upon the following language in Article 15 of the Cherokee Treaty, being the second paragraph thereof:

> "And the said tribe thus settled shall also pay into the National Fund, a sum of money, to be agreed upon by the respective parties, not greater in proportion to the whole existing National Fund, *and the probable proceeds of the land herein ceded or authorized to be ceded or sold, etc.*"

Nothing can be clearer than that this language refers to the land ceded and authorized to be sold by Article 17 of the treaty, to wit, what was known as the neutral lands in Kansas, and at the time estimated at about 1,000,000 acres, and nothing can be clearer than that the language quoted did not refer to the payment for the purchase of land by the incoming Indians to the Cherokee Nation.

Secondly, nothwithstanding the fact that the treaty of 1866 did not require that the money to be paid into the Cherokee Nation should be included in estimating the National Fund, nevertheless it would have been impossible

for the parties to the agreement of 1867 to have arrived at the conclusion they did, that the National Fund of the Cherokee Nation was $678,000, unless they had, as a matter of fact, included the payment made by the Delawares; for the court will see by reference to the report of the Commissioner of Indian affairs for 1867, page 352, that in 1867 the funds of the Cherokee Nation amounted to $620,500.

By reference to the report of the Commissioner of Indian Affairs for 1869, it will be seen that the national warrants of the Cherokee Nation, outstanding at the time the Delaware Cherokee agreement was entered into, and which by its terms were to be deducted, amounted to $120,422. Now deducting this liability from the National Fund would leave $500,078, being $178,000 less than the amount estimated in the Delaware-Cherokee agreement.

It may be answered that the addition of the $157,600 paid in by the Delawares would not be sufficient to make up this difference, but it must be remembered that there were 1,280 Delawares then residing in Kansas and eligible to be included upon the register of those electing to remove to the Cherokee Nation, and at that time neither the Cherokees nor the Delawares knew or could know the exact number who would elect to so remove, and that number necessarily had to be estimated. It will be seen that if the estimate was placed at 1,118 it would account for this difference in funds. As the roll at the time the agreement was entered into consisted of about 900 names, and there were thirty more days for its completion, they would naturally estimate considerable additions thereto.

The estimate would then stand thus:

Funds of the Cherokee Nation in 1867 . . .	$620,500
Estimated to receive from Delawares for land .	178,000
	$798,500
Outstanding indebtedness of the Cherokee Nation, March 7, 1867 . . .	$120,420
	$678,080

NOTE 2. Under the last clause of Article 19, a large number of Cherokees residing upon the neutral lands in Kansas, elected to remain there and become citizens of the United States. All these received patents to 320 acres each. This greatly reduced the neutral lands to be sold, which were estimated in said agreement at 1,000,000 acres, but which in fact were only 799,614.72 acres (See Report of the Commissioner of Indian Affairs for 1868, page 331), and also greatly reduced the amount of money received therefrom, which was estimated at $1,000,000, but which proved to be, when the land was sold, on long credit, only $799,614.72. As a matter of fact, even from this amount a large sum was deducted as expenses of sale. As a result the Delawares paid a much larger rate for citizenship than they should have done.

Later, all the Cherokees who had so remained in Kansas and received land, were re-admitted into the Cherokee Nation, free of cost, and are now being allotted lands again to the same extent as those who did not receive lands in Kansas.

NOTE 3. During the course of the argument, counsel for appellants was asked by the court if the amount paid by the Delawares for equal rights was based upon the per capita value of the invested funds of the Cherokee Nation only, then what consideration was there moving to the Cherokee Nation for the right of participation in the lands of the Cherokees other than those purchased under the first part of the agreement.

The answer to this may not be found in the record. By the decision of this court, in the cases of the Cherokee Nation v. Journeycake (155 U. S., p. 179) and the Cherokee Nation v. Blackfeather (155 U. S., p. 218), it was decided by this court that the payment of this equalizing fund, for equal rights, did, as a matter of fact, carry with it an interest in the lands and property of the Cherokee Nation equal to that of native Cherokees.

As to the query, what consideration passed to the Cherokees for this, counsel can only state his own views, which are based upon the understanding which seems to have been general, that it was necessary to offer some inducement to the Delawares to remove from their homes in Kansas and take up residence in the Indian Territory. An Indian's aversion to leaving his home and the surroundings of a life time is well known and has been the cause of no little embarrassment to the government in the negotiation of many of the treaties with these people. They cling, with even greater tenacity than white people, to the scenes and associations of their early life. At this time all of the five civilized tribes were in an impoverished and destitute condition. They had been torn and decimated by the war, having been divided in sentiment, a part having joined the armies of the North and a part have affiliated with the South. Their improvements had been destroyed, their herds scattered, and when they return, after the close of the war, with feelings of extreme bitterness existing between the two factions, they found their country an absolute waste. In addition to this, there were two years of almost total failure of crops. They needed money and had applied to the Federal government for assistance, but instead of granting this directly, arrangements were made for them to make sales to other friendly Indians and in that manner obtain relief which the government was not able or willing to extend directly. This would accomplish a triple purpose—it would relieve the government from the necessity of making a direct appropriation; it would provide an outlet for the bands in Kansas that it was the purpose and determination of the government to remove, and it would supply occupants for the lands of the five civilized tribes in the Indian Territory, which were understood to be largely in excess of their needs.

To induce the Delawares to remove from their homes in Kansas, to which they have become attached and where their children and grandchildren had been born, it was

necessary to offer some further consideration, and this consideration was that, at some then distant time, when these lands should be divided in severalty, the Delawares should be accorded the same rights in the distribution of the public domain as native Cherokees.

Added to this was a third reason, which was political in its nature. By the Cherokee treaty of 1866, it was provided that the Cherokee Indians who had joined the Confederacy should be settled in Canadian District, south of the Arkansas River, and, if this district should be insufficient for their accommodation, in the northwestern portion of said Nation. These Southern Cherokees were greatly in the majority in numbers, and it will be noticed that the freeman, who by the same treaty were incorporated in the Cherokee Nation, were settled in these same districts, the purpose being, as is well known, to counterbalance the sentiment that otherwise would exist in those two districts. The settlement of the Delawares or other Kansas Indians in the Cherokee Nation would also have a tendency to overcome the political majority of those who had affiliated with the Southern Confederacy.

EXTRACTS FROM THE REPORTS OF THE COMMISSIONER OF INDIAN AFFAIRS.

Report of the Commissioner for 1867.

INDIAN TRUST FUNDS.

No. 2—*Statement of stock account, exhibiting in detail the securities on which the funds of each tribe are invested and now on hand, the annual interest on the same, and the amount of abstracted bonds not provided for by Congress.*

Stock.	Per centum.	Original amount.	Amount abstracted and not provided for by Congress.	Amount on hand.	Annual interest.
CHEROKEE NATIONAL FUND.					
Florida	7	$7,000 00		$7,000 00	$490 00
Georgia	6	1,500 00		1,500 00	90 00
Kentucky	5	6,000 00		6,000 00	300 00
Louisiana	6	7,000 00		7,000 00	420 00
Missouri	6	50,000 00	$50,000 00		
North Carolina	6	20,000 00	13,000 00	7,000 00	420 00
South Carolina	6	117,000 00		117,000 00	7,020 00
Tennessee	6	5,000 00	5,000 00		
Tennessee	5	125,000 00		125,000 00	6,250 00
Virginia	6	90,000 00		90,000 00	5,400 00
		428,500 00	68,000 00	360,500 00	20,390 00
CHEROKEE ORPHAN FUND.					
Virginia	6			$45,000 00	$2,700 00
CHEROKEE SCHOOL FUND					
Florida	7	$7,000 00		$7,000 00	$490 00
Louisiana	6	2,000 00		2,000 00	120 00
Missouri	5½	10,000 00		10,000 00	550 00
Missouri	6	5,000 00		5,000 00	300 00
North Carolina	6	21,000 00	$8,000 00	13,000 00	780 00
South Carolina	6	1,000 00		1,000 00	60 00
Tennessee	6	7,000 00	7,000 00		
Virginia	6	135,000 00		135,000 00	8,100 00
United States loan of 1862	6	10,800 00		10,800 00	648 00
United States loan of 10-40s	5	31,200 00		31,200 00	1,560 00
		230,000 00	15,000 00	215,000 00	12,608 00

Report of the Commissioner for 1868.

Cherokee Neutral Lands.

Under the provisions of the 17th article of a treaty and the amendments thereto made between the United States and the Cherokee Nation of Indians, proclaimed August 11, 1866, a contract was entered into by Secretary Harlan with the American Emigrant Company, stipulating for the sale to the said company of Cherokee neutral lands in the State of Kansas containing 800,000 acres, more or less, partially on long credit, at $1 per acre, subject to the limitations and restrictions of the 17th article of said treaty as amended. As stipulated in said contract a first payment of $25,000 was made by said company August 30, 1866, date of execution of said contract.

Secretary Browning regarding the above contract of sale as not being in conformity with said treaty and amendments thereto, and the Attorney General, to whom the question was submitted, sustaining the views of Secretary Browning, a supplementary article to the treaty of July 19, 1866, was concluded on the 27th of April, 1868, between the United States and the Cherokee Nation, and ratified June 10, 1868. Under the provisions of the supplemental article, the American Emigrant Company assigned, for a consideration, all its right and title in said lands to James F. Joy, the said Joy assuming all the obligations of said company under their contract modified as provided in the supplemental article of the 29th of April.

The total number of acres contained in the whole area of the Cherokee neutral lands is		799,614 72
Amount occupied by $50-improvement settlers, 17th article treaty	7,291 03	
Occupied by pre-emption claimants, 17th Article treaty	146,052 07	
Occupied by Indian settlers, 19th article treaty	6,071 93	
Area of unoccupied lands sold to Mr. Joy under his contract	640,199 69	
		799,614 72
Number of acres reported for patent to James F. Joy, October 13, 1868		108,169 70

For further information in relation to the Cherokee neutral lands, I submit a general synopsis of the areas and valuations of the land taken from the report of the commissioners appointed to make the appraisement. As regards the correctness of this synopsis it may be well to state that owing to the voluminous character of the appraisers' report, and its having been so recently transmitted to this office, sufficient time has not elapsed to make a thorough examination of the same. I also submit a consolidated statement presenting in a more concise manner the trust land accounts than is reported as above in detail, which I trust will be found satisfactory.

Very respectfully, your obedient servant,

LONSVILLE TWITCHELL,
Clerk in charge of Indian Trust Funds.

Hon. N. G. TAYLOR,
Commissioner Indian Affairs.

Report of the Commissioner for 1869.

Payment of Cherokee National Warrants Under 23d Article, Treaty of July 19, 1866.

The payment of these warrants representing the outstanding indebtedness of the Cherokee Nation, caused by the suspension of the payment of their annuities, was commenced March 7, 1867, and continued at the request and approval of the Cherokee national council, or by delegates duly authorized by it.

The amount of said warrants paid by late Secretary Browning, subsequent to March 7, 1867, was	$94,885 66
Amount paid by Hon. J. D. Cox, Secretary, trustee, etc.	25,537 21
Total amount expended in payment of warrants	120,422 87

The sources from which the funds were derived for the payment of these warrants, are as follows:

From the proceeds of the sale of bonds held in trust for their benefit	$108,566 51
From the head of appropriation "Fulfilling treaty with Cherokees proceeds of lands"	11,856 36
	120,422 87

Sale of Cherokee Lands to Delawares

The 15th article of a treaty between the United States and the Cherokee Nation, ratified August 11, 1866, provided certain conditions or terms, upon which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of 96° of west longitude, the price to be agreed upon between said tribes, subject to the approval of the President of the United States.

And a treaty having been made with the Delaware tribe, ratified August 10, 1866, providing for their removal to certain lands to be ceded to the United States by the Cherokees, which was not ceded to the United States, an agreement was made between the Cherokee and Delaware Indians on the 8th of April, 1867, which has since been approved by the President, by which the Cherokees sold 157,600 acres to the said Delawares at one dollar per acre, in payment for which the Delawares transferred to the Cherokees certain bonds held in trust by the Secretary of the Interior, said Delawares becoming a part of the Cherokee Nation, and by other terms of the contract transferring their pro rata shares of certain other stocks held in trust by the Secretary of the Interior, to the credit of the Cherokee Nation.

See report of changes in Indian Trust Fund of this date.

Treaty between the United States and the Delaware Tribe of Indians. Concluded May 30, 1860. *Ratified and proclaimed August* 22, 1860.

A PROCLAMATION

By the President of the United States of America.

To all and singular to whom these presents shall come, Greeting: May 30, 1860.

Preamble. Whereas a treaty was made and concluded at Sarcoxieville, on the Delaware reservation, on the thirtieth day of May, eighteen hundred and sixty, by Thomas B. Sykes, as commissioner on the part of the United States, and the chiefs and headmen of the Delaware tribe of Indians hereinafter mentioned, which treaty is in the following words, to wit:

Contracting parties. Articles of agreement and convention made and concluded at Sarcoxieville, on the Delaware reservation, this thirtieth day of May, one thousand eight hundred and sixty, by Thomas B. Sykes, as commissioner on the part of the United States, and the following named chiefs of the Delaware tribe of Indians, viz: John Connor, head chief of the whole tribe; Sar-cox-ie, chief of the Turtle band; Ne-con-he-con, chief of the Wolf band; Rock-a-to-wha, chief of the Turkey band, and assistants to the said head chief, chosen and appointed by the people, and James Connor, chosen by the said chiefs as delegate.

Provisions of treaty of May 6th, 1854. Article I. By the first article of the treaty made and concluded at the city of Washington, on the sixth day of May, one thousand eight hundred and fifty-four, between George W. Manypenny, commissioner on the part of the United States, and certain delegates of the Delaware tribe of Indians, which treaty was ratified by the Senate of the United States on the eleventh day of July, one thousand

Vol. x. p. 1048.

eight hundred and fifty-four, there was reserved, as a permanent home for the said tribe, that part of their country lying east and south of a line beginning at a point on the line between the Delawares and Half-breed Kansas, forty miles in a direct line west of the boundary between the Delawares and Wyandottes; thence north ten miles; thence in an easterly course to a point on the south bank of Big Island creek, which shall also be on the bank of the Missouri river, where the usual high-water line of said creek intersects the high water line of said river. And by the eleventh article of said treaty it was stipulated that "at any time hereafter when the Delawares desire it, and at their request and expense the President may cause the country reserved for their permanent home, to be surveyed in the same manner as the ceded country is surveyed, and may assign such portion to each person or family as shall be designated by the principal men of the tribe: Provided, such assignments shall be uniform."

The Delawares having represented to the government that it is their wish that a portion of the lands reserved for their home may be divided among them in the manner contemplated by the eleventh article of the treaty aforesaid, it is hereby agreed by the parties hereto, that the said reservation shall be surveyed as early as practicable after the ratification of these articles of agreement and convention, in the same manner that the public lands are surveyed; and to each member of the Delaware tribe there shall be assigned a tract of land containing eighty acres, to include in every case, as far as practicable, a reasonable portion of timber, to be selected according to the legal subdivisions of survey.

Reservation to be surveyed.

Eighty acres to be assigned to each member of the tribe.

Mode of division.

Article II. The division and assignment in severalty among the Delawares of the land shall be made in a compact body, under the direction of the Secretary of the Interior, and his decision of all questions arising thereupon shall be final and conclusive.

22050

Certificates shall be issued by the Commissioner of Indian Affairs, for the tracts assigned in severalty, specifying the names of the individuals to whom they have been assigned respectively, and that the said tracts are set apart for the exclusive use and benefit of the assignees and their heirs. And said tracts shall not be alienable in fee, leased, or otherwise disposed of, except to the United States or to members of the Delaware tribe, and under such rules and regulations as may be prescribed by the Secretary of the Interior; and said tracts shall be exempt from levy, taxation, sale, or forfeiture, until otherwise provided by Congress.

Certificates to issue, &c.

Land not alienable, except, &c.

Prior to the issue of the certificates aforesaid, the Secretary of the Interior shall make such rules and regulations as he may deem necessary or expedient, respecting the disposition of any of said tracts, in case of the death of the person or persons to whom they may be assigned, so that the same shall be secured to the families of such deceased persons. And should any of the Indians to whom tracts shall be assigned, abandon them, the said Secretary may take such action in relation to the proper disposition thereof, as, in his judgment, may be necessary and proper.

Certificates to be secured to family, &c.

Abandonment of land assigned.

The improvements of the Indians residing on the lands to be sold shall be valued by the United States, and the individual owners thereof shall receive the amount realized from the sale of the same, to be expended in building other improvements for them on the lands retained.

Improvements

Article III. The Delaware tribe of Indians, entertaining the belief that the value of their lands will be enhanced by having a railroad passing through their present reservation, and being of the opinion that the Leavenworth, Pawnee, and Western Railroad Company, incorporated by an act of the legislative assembly of Kansas Territory, will have the advantage of travel and general transportation over every other company proposed to be formed, which will run through their lands, have expressed a desire that the said Leavenworth, Pawnee and Western Railroad Com-

Leavenworth, Pawnee, and Western R. R. Co. to have a preference in the purchase of land remaining.

See amendment, *Post*, p. 164.

pany shall have the preference of purchasing the remainder of their lands after the tracts in severalty and those for the special objects herein namel shall have been selected and set apart, upon the payment into the United States Treasury, which payment shall be made within six months after the quantity shall have been ascertained, in gold or silver coin, of such a sum as three commissioners, to be appointed by the Secretary of the Interior, shall appraise to be the value of said land: Provided, in no event shall the value be placed below the sum of one dollar and twenty-five cents per acre, exclusive of the cost of survey of the same. [And that the United States will issue a patent in fee-simple to said company, upon the payment as aforesaid, for all their land remaining in Kansas.] It is, therefore, agreed by the United States that the wishes of the Delawares shall be granted; that they will accept of the trust reposed upon them; and that the money resulting from such disposition of the lands shall be disposed of and applied in the manner provided for by the seventh and eighth articles of the Delaware treaty of sixth May, one thousand eight hundred and fifty-four, after expending a sufficient sum to enable them to commence agricultural pursuits under favorable circumstances. It is also agreed that the said railroad company shall have the perpetual right of way over any portion of the lands allotted to the Delawares in severalty, on the payment of a just compensation therefor, in money, to the respective parties whose lands are crossed by the line of railroad.

Minium price, $1.25 per acre.

Vol. x. p. 1050.

Railroad company to have perpetual right of way.

Provision for Delawares who are absent.

Article IV. Whereas some years ago a good many of the Delawares went down among the Southern Indians, and as there are still about two hundred of them there, and as they have reason to believe they will return soon, it is hereby agreed that eighty acres each be set apart for them, to be allotted to them as they return, and certificates to be then issued to them, in the same manner as to those now within the reservation, and in every respect to be governed by the same rules and regulations as prescribed for the

government of the lands reserved by the preceding articles, that until they return the allotments set apart for belong to the nation in common.

Reservations.

Article V. There shall be reserved three hundred and twenty acres of ground where the mill, and school house, and Ketchum's store now stand; three hundred and twenty acres where the council house now is; one hundred and sixty acres where the Baptist mission now is; one hundred and sixty acres where the agency house now is; forty acres where the Methodist Episcopal Church South now is; forty acres where the Methodist Episcopal Church North now is; which several tracts, with the improvements thereupon, shall be disposed of when the objects for which they have been reserved shall have been accomplished, in such manner and for such purposes as the Secretary of the Interior shall determine to be just and equitable, for the benefit of the Delawares.

When to be disposed of.

Vol. x. p. 1051.

Article VI. By article fourteen of the treaty between the Delawares and the United States, of May six, eighteen hundred and fifty-four, ratified by the Senate July eleven, eighteen hundred and fifty-four, the United States bound herself to protect them and their rights; and that whereas, that depredations of various kinds have been committed upon them and their lands, it is hereby agreed that the United States shall pay them, within twelve months from the ratification of these articles of treaty and convention, thirty thousand dollars as indemnity for timber that has been cut off their reservation by the whites, and nine thousand five hundred dollars as indemnity for ponies and cattle that have been stolen from them by the whites since their last treaty with the United States. It is further stipulated that should the Senate of the United States refuse this article, it shall in no wise affect the validity of the other articles, or prejudice the right of the Delawares to appeal to the Congress of the United States for the indemnities hereby agreed upon.

United States to pay for certain depredations upon Indians.

Proviso.

Provisions of treaty of Sept. 24, 1829. Vol. vii. p. 327.

It is further understood that, at the treaty between the Delawares and the United States, made September twenty-four, eighteen hundred and twenty-nine, the boundary of the reservation then set apart for them included the Half-breed Kansas lands; but it afterwards proved that the United States had previously set apart these lands for the Half-breed Kaws, and by that means they have been kept out of the use and benefit of said lands; it is, therefore, hereby agreed that a fair valuation shall be made by the United States upon such lands, under the direction of the Secretary of the Interior, and that the amount of said valuation shall be paid the Delawares.

United States to pay for certain lands.

The chiefs and interpreter each to have a tract of land.

Article VII. In consideration of the long and faithful services of the chiefs of the Delaware nation, and of their interpreter, who is also a member of the nation, it is further agreed that the said chiefs and interpreter shall have allotted to each a tract of land, to be selected by themselves, and shall receive a patent in fee-simple therefor from the President of the United States, viz: John Connor, principal chief, six hundred and forty acres; Sar-cox-ie, chief of the Turtle band, three hundred and twenty acres; Rock-a-to-wha, chief of the Turkey band, three hundred and twenty acres; Ne-con-he-con, chief of the Wolf band, three hundred and twenty acres; and Henry Tiblow, interpreter, three hundred and twenty acres; the lines of each tract to conform to the legal subdivisions of survey. It is further agreed that, from the money as paid the Delaware tribe of Indians, in accordance with article number ten of this treaty, the chiefs of said tribe of Indians shall appropriate one thousand five hundred dollars as the annual salary of the councilmen of the said tribe of Indians.

John Connor, Sar-cox-ie, Rock-a-to-wha, Ne-con-he-con, Henry Tiblow.

Annual salary of councilmen.

Inconsistent stipulations invalid.

Article VIII. Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect.

Expenses hereof to be borne by the Indians.

Article IX. As these articles are entered into for the sole use and benefit of the Delaware Indians, it is understood that the expenses incident to carrying them into ef-

fect shall be defrayed from the funds of said Indians, held in trust for them by the United States.

Interest to be paid April 1st and Oct. 1st.

Article X. The interest accruing to the Delawares under the former treaties, and that which may accrue under this, shall be paid on the first of April and October in each year.

Signature.

In testimony whereof, the said Thomas B. Sykes, commissioner as aforesaid, and the said delegates of the Delaware tribe of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

THOMAS B. SYKES, *Commissioner,* [SEAL.]
JOHN CONNOR, *Head Chief,* his x mark. [SEAL.]
SAR-COX-IE, or The Highest, *Assistant Chief,* his x mark. [SEAL.]
NE-CON-HE-CON, or Bounding Ahead, *Asst. Chief,* his x mark. [SEAL.]
ROCK-A-TO-WHA, or Sun rise, *Assistant Chief,* his x mark. [SEAL.]
JAMES CONNOR, or Ah-la-a-chick, his x mark. [SEAL.]

Signed in the presence of—

HENRY TIBLOW, *United States Interpreter,*
JAMES FINDLAY,
WILLIAM G. BRADSHAW,
SAMUEL PRIESTLEY,
THOMAS S. GLADDING.

Ratification June 27, 1860.

And, whereas, the said treaty having been submitted to the Senate of the United States, for its constitutional action thereon, the Senate did, on the twenty-seventh of June, one thousand eight hundred and sixty, advise and consent to the ratification of the same, by a resolution and with an amendment in the words and figures following, to wit:

"IN EXECUTIVE SESSION,
"SENATE OF THE UNITED STATES, June 27, 1860.

"*Resolved,* (two-thirds of the Senators present concurring,) That the Senate advise and consent to the ratifica-

tion of the articles of agreement and convention made and concluded at Sarcoxieville the thirtieth day of May, eighteen hundred and sixty, by Thomas B. Sykes, commissioner on the part of the United States, and certain chiefs of the Delaware tribe of Indians, with the following amendment:

Amendment to Article III, *ante*, p. 162.

Conditions upon which patents shall issue to the railroad.

At the end of article third, add: It being the intent and meaning of the Delawares, in consenting to the sale of their surplus lands to said company, that they should, in good faith, and within a reasonable time, construct a railroad through their reservation, and to carry out this intent as well as to secure so great a public convenience, it is agreed that no patent shall issue for any of these lands, nor shall the sale be binding upon the Delaware Indians or the United States, until the Secretary of the Interior shall be fully satisfied that a line of twenty-five miles of the road from Leavenworth City shall have been completed and equipped, when a patent shall issue for one-half of the ascertained quantity. The patent for the residue shall issue only when the said Secretary shall be satisfied that the road has been, in like manner, completed and equipped to the western boundary of the Delaware reservation. And if the said company shall fail or neglect to construct either the first or second sections of the road, or having constructed the first section and fail to complete the second section within a reasonable time, they shall forfeit to the United States all right to the lands not previously patented, and the certificate of purchase shall be deemed and considered cancelled. And provided further, That in case the said company shall fail to make payment for the lands or fail to construct the road, as hereinbefore stipulated, within a reasonable time, the surplus lands shall be disposed of by the Secretary of the Interior, at public auction, in quantities not exceeding one hundred and sixty acres; but, in no case for a sum less than the appraised value, the net proceeds to be applied in the same manner

In cases of failure, &c. surplus lands to be disposed of.

as hereinbefore specified: And provided further, That the said railroad company shall, finally, and in good faith, sell and dispose of all said lands within seven years after receiving the patent therefor, except what may be necessary for railroad purposes; and in default thereof so much thereof as may remain undisposed of shall revert to the Delaware nation, to be disposed of as is herein provided for other forfeited lands.

Railroad to sell lands within seven years.

"Attest: ASBURY DICKINS, *Secretary.*"

And whereas the foregoing amendment having been fully interpreted and explained to the chiefs and headmen of the Delaware tribe aforesaid, they did thereunto, on the twenty-first day of July, one thousand eight hundred and sixty, give their free and voluntary assent in the words and figures following, to wit:

Amendment assented to.

We, the undersigned chiefs, councillors, and headmen of the tribe of Delaware Indians on behalf of said tribe, now in full council assembled, having had fully explained to us the amendment made on the 27th day of June last, by the Senate of the United States, to the treaty made and concluded on the 30th of May last, at Sarcoxieville, on the Delaware reservation, by Thomas B. Sykes, commissioner on the part of the United States, and the following named chiefs of the Delaware tribe of Indians, viz: John Connor, head chief of the whole tribe; Sar-cox-ie, chief of the Turtle band; Rock-a-to-wha, chief of the Turkey band, and assistant to the said head chief, chosen and appointed by the people; and James Connor, chosen by the said chiefs as delegate, which amendment is in the following words, viz:

AMENDMENT.

At the end of article third add: It being the intent and meaning of the Delawares, in consenting to the sale of their surplus lands to said company, that they should, in good faith, and within a reasonable time, construct a rail-

road through their reservation, and to carry out this intent, as well as to secure so great a public convenience, it is agreed that no patent shall issue for any of these lands, nor shall the sale be binding upon the Delaware Indians nor the United States until the Secretary of the Interior shall be fully satisfied that a line of twenty-five miles of the road from Leavenworth City shall have been completed and equipped, when a patent shall issue for one-half of the ascertained quantity. The patent for the residue to issue only when the said Secretary shall be satisfied that the road has been in like manner completed and equipped to the western boundary of the Delaware reservation. And if the said company shall fail or neglect to construct either the first or second sections of the road, or having constructed the first section and fail to complete the second section within a seasonable time, they shall forfeit to the United States all right to the lands not previously patented, and the certificate of purchase shall be deemed and considered cancelled. And provided further, That in case the said company shall fail to make payment for the lands, or fail to construct the road, as hereinbefore stipulated, within a reasonable time, the surplus lands shall be disposed of by the Secretary of the Interior at public auction, in quantities not exceeding one hundred and sixty acres; but in no case for a sum less than the appraised value, the net proceeds to be applied in the same manner as hereinbefore specified. And provided further, That the said railroad company shall finally and in good faith sell and dispose of all said lands within seven years after receiving the patent therefor, except what may be necessary for railroad purposes; and in default thereof, so much thereof as may remain undisposed of shall revert to the Delaware nation, to be disposed of as is herein provided for other forfeited lands.

Do hereby accept and consent to the said amendments to the articles of agreements and convention aforesaid, and agree that the same shall be considered as a part thereof.

In testimony whereof, we have hereunto set our hands and affixed our seals, this twenty-first day of July, Anno Domini 1860. Signatures, July 21, 1860.

JOHN CONNOR, *Head Chief*, his x mark. [SEAL.]
SAR-COX-IE, *Chief of Turtle band*, his x mark. [SEAL.]
NE-CON-HE-CON, *Chief of Wolf band*, his x mark. [SEAL.]
ROCK-A-TO-WHA, *Chief of Turkey band*, his x mark. [SEAL.]
JAMES CONNOR, *Delegate*, his x mark. [SEAL.]

Witness:—

HENRY TIBLOW, *United States Interpreter*,
THOS. S. GLADDING,
SAMUEL PRIESTLEY,
WM. G. BRADSHAW.

I do hereby certify that the foregoing instrument of writing was fully explained by me to the Delaware tribe of Indians in council assembled in the day and year last above written, and that they did accept and consent to the said foregoing instrument of writing, and subscribed their names and affixed their seals thereto in my presence.

Given under my hand this twenty-first day of July, one thousand eight hundred and sixty.

THOS. B. SYKES, *U. S. Agent for the Delawares.*

Now, therefore, be it known that I, JAMES BUCHANAN, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the twenty-seventh of June, eighteen hundred and sixty, accept, ratify and confirm said treaty with the amendment as aforesaid. Ratified and proclaimed. Aug. 22, 1860.

In testimony whereof, I have caused the seal of the United States to be hereto affixed, having signed the same with my hand.

Done at the city of Washington, this twenty-second day of August, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States the eighty-fifth.

[L. S.]

JAMES BUCHANAN.

By the President:

WM. HENRY TRESCOT, *Acting Secretary of State.*

Treaty between the United States of America and the Delaware Tribe of Indians; Concluded July 4, 1866; Ratification advised July 26, 1866; Proclaimed August 10, 1866.

ANDREW JOHNSON,

President of the United States of America. July 4, 1866.

To all and singular to whom these presents shall come, Greeting:

Preamble. Whereas a treaty was made and concluded at the Delaware Agency, Kansas, on the fourth day of July, in the year of our Lord one thousand eight hundred and sixty-six, by and between Thomas Murphy, John G. Pratt, and William H. Watson, Commissioners, on the part of the United States, and Captain John Connor, Captain Sarcoxie, Charles Journeycake, and other chiefs and councillors of the Delaware tribe of Indians, on the part of said tribe of Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to wit:

Contracting parties. Articles of Agreement between the United States and the chiefs and councillors of the Delaware Indians, on behalf of said tribe, made at the Delaware Agency, Kansas, on the fourth day of July, eighteen hundred and sixty-six.

Preamble. Whereas Congress has by law made it the duty of the President of the United States to provide by treaty for the removal of the Indian tribes from the State of Kansas; and whereas the Delaware Indians have expressed a wish to remove from their present reservation in said State to the Indian country, located between the States of Kansas and Texas; and whereas the United States have, by treaties negotiated with the Choctaws and Chickasaws, with the Creeks, and with the Seminoles, Indian tribes residing in said Indian country, acquired the right to locate other Indian tribes within the limits of the same; and whereas the

Missouri River Railroad Company, a corporation existing in the State of Kansas by the laws thereof—and which company has built a railroad connecting with the Pacific Railroad, from near the mouth of the Kaw River to Leavenworth, in aid of which road the Delawares, by treaty in eighteen hundred and sixty-four, agreed to dispose of their lands—has expressed a desire to purchase the present Delaware Indian reservation in the said State, in a body, at a fair price:

It is hereby agreed between Thomas Murphy, superintendent of Indian affairs, John G. Pratt, agent for the Delawares, and William H. Watson, special commissioner, who are duly appointed to act for the United States; and Captain John Connor, Captain Sarcoxie, and Charles Journeycake, chiefs, and James Ketchum, James Connor, Andrew Miller, and John Sarcoxie, councillors, duly appointed and authorized by said Delaware Indians to act for them and in their behalf, to wit:

Value of reservation heretofore sold to be paid the Delawares.

Article I. That the United States shall secure and cause to be paid to said Indians the full value of all that part of their reservation, with the improvements then existing on the same, heretofore sold to the Leavenworth, Pawnee, and Western Railroad Company, according to the terms of a treaty ratified August twenty-second, eighteen hundred and sixty, and supplemental treaties, and in accordance with the conditions, restrictions, and limitations thereof.

Remainder of reservation may be sold.

Article II. That the Secretary of the Interior shall be, and he is, authorized to sell to said Missouri River Railroad Company, or to other responsible party or parties, in a body, all the remaining part of said reservation, being the lands conveyed to said Delaware Indians in pursuance of the provisions of the supplemental treaty of September twenty-fourth, eighteen hundred and twenty-nine, and all other lands owned by the said tribe in the State of Kansas not previously disposed of, except as hereinafter provided, for a price not less than two dollars and fifty cents per acre, exclusive of improvements.

Price.

Lands of those Indians electing to become citizens to be reserved from sale.

Article III. It shall be the duty of the Secretary of the Interior to give each of all the adult Delaware Indians who have received their proportion of land in severalty an opportunity, free from all restraint, to elect whether they will dissolve their relations with their tribe and become citizens of the United States; and the lands of all such Indians as may elect to become citizens, together with those of their minor children, held by them in severalty, shall be reserved from the sale hereinbefore provided for. And the Secretary of the Interior shall cause any and all improvements made on any of the said lands, the sale of which is provided for, whether held in common or in severalty, to be appraised, and the value thereof added to the price of said lands, to be paid for when payment is made for the lands upon which said improvements exist; and the money received for the improvements on the land of each Indian held in severalty shall be paid to him at any time after its payment to the Secretary of the Interior, when the department shall be notified that said Indian is ready to remove to the Indian country, to provide for his removal to, and to enable him to make improvements on his new home therein: Provided, That whenever it shall be ascertained under the registry above provided for what lands will be vacated, there shall be set apart from the lands held in common, for each child of Delaware blood, born since the allotment of land to said tribe in severalty was made under previous treaties, a quantity of land equal to the amount to which they would have been entitled had they been born before said allotment, provided that selections for children belonging to families whose head may elect to remain may be made from lands which are to be vacated by those who elect to remove: And provided further, That in case there shall be improvements upon any heretofore allotted lands, so selected for children of the Delawares, payment shall be made for such improvements, at their appraised value, by the parents or guardians of said children, at the same time as if the said lands had been sold to the railroad company or other parties.

Improvements to be appraised.

value thereof paid to each Indian.

Lands to be set apart for children born since allotment

Improvements

The United States to sell certain lands to the Delawares.

Article IV. The United States agree to sell to the said Delaware Indians a tract of land ceded to the government by the Choctaws and Chickasaws, the Creeks, or the Seminoles, or which may be ceded by the Cherokees in the Indian country, to be selected by the Delawares in one body in as compact a form as practicable, so as to contain timber, water, and agricultural lands, to contain in the aggregate, if the said Delaware Indians shall so desire, a quantity equal to one hundred and sixty (160) acres for each man, woman, and child who shall remove to said country, at the price per acre paid by the United States for the said lands, to be paid for by the Delawares out of the proceeds of sales of land in Kansas, heretofore provided for. The said tract of country shall be set off with clearly and permanently marked boundaries by the United States; and also surveyed as public lands are surveyed, when the Delaware council shall so request, when the same may, in whole or in part, be allotted by said council to each member of said tribe residing in said country, said allotment being subject to the approval of the Secretary of the Interior.

Price.

Boundaries and surveys.

Peaceable possession guaranteed.

Article V. The United States guarantee to the said Delawares peaceable possession of their new home herein provided to be selected for them in the Indian country, and protection from hostile Indians and internal strife and civil war, and a full and just participation in any general council or territorial government that may be established for the nations and tribes residing in said Indian country.

Proceeds of sales of lands to be paid to the Indians, and how.

Article VI. It is agreed that the proceeds of the sale of the Delaware lands herein provided for shall be paid to said Indians in the manner following, to wit: Whenever the Department of the Interior shall be notified by the council, through the agent, that any of the Delawares who hold land in severalty are ready to remove, at the same time describing their allotments, there shall be paid to each such person the value of his allotment, and that of his family, to enable him to remove to and improve his new home,

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provided the money for the said allotment shall have been paid to the Secretary of the Interior; and while said money, or any part thereof, shall remain in the Treasury of the United States, the Delawares shall be entitled to receive interest on the amount so retained at the rate of five (5) per cent per annum. And the residue of the proceeds of the sale of the Delaware lands, being those which have not been allotted, or which have once been allotted, but have been abandoned by the allottees, shall be added to the general fund of the Delawares, interest thereon to be paid to the Indians in the same manner as is now provided in regard to that fund.

Purchase of the lands by the Missouri River Railroad Company.

Article VII. Within thirty days after the ratification of this treaty it shall be the duty of the Secretary of the Interior to give the said Missouri River Railroad Company notice that he is authorized to contract with them or other responsible party or parties for the sale of said lands on the terms specified in this treaty, indicating the approximate quantity thereof; and within twenty days after receiving said notice at their usual place of doing business in the State of Kansas it shall be competent for said company to elect to make the purchase, by filing with the said Secretary their bond, with approved security, in double the amount proposed to be paid by them for the whole of said lands, guaranteeing that they will purchase all of the lands to be sold under the provisions of this treaty, and that they will pay for them in accordance with the terms thereof. And upon the filing of a satisfactory bond as above provided by said company, the contract for such purchase shall be concluded by the said Secretary with said Missouri River Railroad Company, at not less than two dollars and fifty cents per acre for the whole of the lands herein provided to be sold: Provided, however, That if said railroad company shall not within the twenty days above limited file its bond for the purchase as herein prescribed, the Secretary of the Interior may at the expiration of that time accept any offer for the whole of said lands in one body, at

If, &c. land may be sold to others.

not less than two dollars and fifty cents per acre, from any other responsible parties; but no offer shall be considered from other parties than said Missouri River Railroad Company, unless accompanied by a certificate of deposit in the First National Bank of the city of Washington, D. C., to the credit of the said Secretary, for an amount equal to ten per cent of the aggregate value of the land at the price proposed, to be forfeited for the use of the Delawares if the sale should be awarded to said person or corporation so proposing to purchase the lands, and said party should fail to make payment as hereinafter provided.

Payment, when to be made.

Article VIII. That within sixty days after the sale of said land shall have been effected, the purchaser shall pay to the said Secretary, in trust for the Delawares, the stipulated price of said unallotted lands, with the appraised value of improvements thereon, excepting therefrom the mill reservation, and the quarter sections upon which the council-house and blacksmith shops are built, the use of which shall be retained until the final removal of the Delawares, and for which payment shall not be required from the purchaser until possession is delivered; and from time to time thereafter, as often as the Secretary of the Interior shall notify the said purchaser that ten thousand acres or more of said lands have been vacated by said Indians, within three months thereafter, said purchaser shall pay to the Secretary of the Interior, in trust for the said Indians, the stipulated price for said lands, with the appraised value of the improvements; and so on until all are paid for, according to the true intent and meaning hereof; and as said lands shall be paid for, patents therefor, conveying the same in fee simple, shall be from time to time issued to said purchaser, or to his or its assigns, by the President of the United States.

Registry to be made of Delawares electing to become citizens.

Article IX. It is also stipulated that the Secretary of the Interior shall cause a registry to be made of the names of all of said Delawares who have elected to dissolve their tribal relations and to become citizens of the United States,

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as provided in this treaty, with the names, ages, and sex of the members of the family of each of said Delawares, and present a certified copy of the same to the judge of the district court of the United States for the district of Kansas, and cause a copy to be filed in the office of the commissioner of Indian affairs, after which any of said Delawares, being adults, may appear before the said judge in open court, and make the same proof and take the same oath of allegiance as is provided by law for the naturalization of aliens, and also make proof to the satisfaction of said court that he is sufficiently intelligent and prudent to control his own affairs and interests, that he has adopted the habits of civilized life, and has been able to support, for at least five years, himself and family; when he shall receive a certificate of the same under the seal of the said court; and on the filing of the said certificate in the office of the commissioner of Indian affairs, the said Delaware Indian shall be constituted a citizen of the United States, and be entitled to receive a patent in fee simple, with power of alienation, for the land heretofore allotted to him, and his just proportion, in cash or in bonds, of the cash value of the credits of said tribe, principal and interest, then held in trust by the United States; and also, as the same may be received, his proportion of the proceeds of the sale of lands under the provisions of this treaty, when he shall cease to be a member of said tribe. Whereupon all of the minor children of those who have become citizens shall be construed to have elected to sever their connection with said tribe for the time being, and be entitled to their just proportion of the annuities of the tribe, to be paid to the head of the family to be expended for their support and education until they shall attain the age of twenty-one years, after which each shall elect to remove to his tribe or to become a citizen of the United States, as hereinbefore provided, and if thus admitted to citizenship, shall be entitled to all the privileges and interests herein provided for the head of the family. Should any minor as aforesaid, arriv-

Mode of procedure to become citizens.

Patent of land before allotted.

Proportion of proceeds of sales.

Minor children.

ing at the age of twenty-one years, and electing to become a citizen of the United States, or any adult Indian having so elected, fail to be admitted, he shall not be compelled to remove, but the Secretary of the Interior shall provide proper guardianship for the protection of his rights and interests and those of his family. There shall be granted to each of the Delawares who have thus become citizens, a patent in fee simple for the lands heretofore allotted to them, and, if they do not remove with the nation, their pro rata share of all annuities and trust property held by the United States for them, the division to be made under the direction of the President of the United States, after which such persons shall cease to be members of the Delaware tribe, and shall not further participate in their councils, nor share in their property or annuities.

Grant to those that have become citizens.

Article X. It is further agreed that the funds of the Delawares shall never be applied by the government to the payment of the debt or debts of any individual member or members of the nation; nor shall any person be licensed to trade with the Delawares without the consent of the chiefs and council; and the salaries of the chiefs shall henceforward be four hundred dollars per annum.

Funds of the tribe not to be used to pay debts of individual members.

Licenses to trade.

Salaries of chiefs.

Article XI. The Delawares acknowledge their dependence upon the United States, and again renew their pledges of devotion to the government thereof, and ask its protection; and the United States agree to protect, preserve, and defend them in all their just rights.

Dependence and protection.

Article XII. It is also agreed that if the said Secretary should not be able to sell the said lands as hereinbefore provided, he may cause the same to be appraised, in separate tracts, at their fair cash value, no tract to be valued at less than two dollars and fifty cents per acre, and the same when appraised may be sold at not less than the appraised value, and for as much more as the same will bring, and the money arising from the sale to be applied and distributed as hereinbefore provided.

Sale of lands.

Right of way for railroads.

Article XIII. It is agreed by the Delawares that railroad companies engaged in building roads whose routes shall lie through their new reservation in the Indian country shall have a right of way through and over said lands, not exceeding two hundred feet in width for any such road, and also the right to enter on all lands and take and use such gravel, stone, and other material except timber as may be necessary for the construction of such roads, compensation to be made for any damages done in obtaining such material, and for any damages arising from the location or running of such roads to improvements which shall have been made before such road shall have been located, such damages to be ascertained under regulations to be prescribed by the Secretary of the Interior.

Settlement of all claims of the Delawares for depredations.

Article XIV. The United States further agree that, in accordance with the general provisions of the sixth article of the Delaware treaty of May thirty, eighteen hundred and sixty, which have not yet been fulfilled, there shall be credited to the Delawares, in the purchase of their new reservation in the Indian country, the sum of thirty thousand dollars, which credit by the United States shall be received by the Delawares as a full settlement of all claims against the government for depredations upon timber to the date of the signing of this treaty; and the Delawares shall receive, without cost, from the United States, land included within their new reservation to the amount of twenty-three sections, in place of the twenty-three sections of half-breed Kaw lands referred to in said sixth section of the treaty of eighteen hundred and sixty; and inasmuch as the Delawares claim that a large amount of stock has been stolen from them by whites since the treaty of eighteen hundred and fifty-four, the United States agree to have a careful examination of such claims made under the direction of the Secretary of the Interior, and when the value of such stolen stock shall have been ascertained, the same shall be reported to Congress with a recommendation for an appropriation to pay for the same; and all moneys appro-

priated for such purpose shall be paid to the owners of said stock.

Delawares not to move until new homes are provided.

Article XV. It is also agreed by the contracting parties that nothing contained in this treaty shall be so construed as to require the Delawares to remove from their present homes, until after they shall have selected and received title to lands for new homes elsewhere.

Execution.

In testimony whereof, the said superintendent, agent, and special commissioner, on behalf of the United States, and the said chiefs and councillors on behalf of the Delawares, have hereunto set their hands and seals this fourth day of July, one thousand eight hundred and sixty-six.

THOS. MURPHY, [SEAL.]
Superintendent.

JOHN G. PRATT, [SEAL.]
Agent.

W. H. WATSON, [SEAL.]
Special Commissioner.

JOHN CONNOR, his x mark, [SEAL.]
Head Chief.

CAPT. SARCOXIE, his x mark, [SEAL.]
Assistant Chief.

CHARLES JOURNEYCAKE, [SEAL.]
Assistant Chief.

JAMES KETCH[U]M, [SEAL.]

JAMES CONNOR, his x mark, [SEAL.]

ANDREW MILLER, his x mark, [SEAL.]

JOHN SARCOXIE, his x mark, [SEAL.]
Councillors.

ISAAC JOHNYCAKE,
U. S. Interpreter.

In presence of—

HENRY S. BULKLEY.
EDWARD S. MENAGER.
LOUIS A. MENAGER.

Ratification.

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-sixth day of July, one thousand eight hundred and sixty-six, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
July 26, 1866.

Resolved, (two thirds of the Senators present concurring,) That the Senate advise and consent to the ratification of the articles of agreement between the United States and Delaware Indians, made at the Delaware Agency, Kansas, on the fourth day of July, one thousand eight hundred and sixty-six.

Attest:

J. W. FORNEY, *Secretary*.

Proclaimed.

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the twenty-sixth of July, one thousand eight hundred and sixty-six, accept, ratify, and confirm the said treaty.

In testimony whereof, I have hereto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington this tenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States of America the ninety-first.

[SEAL.]

ANDREW JOHNSON.

By the President:

HENRY STANBERY, *Acting Secretary of State*.

Treaty between the United States of America and the Cherokee Nation of Indians; Concluded July 19, 1866; *Ratification advised, with Amendments, July* 27, 1866; *Amendments accepted July* 31, 1866; *Proclaimed August* 11, 1866.

ANDREW JOHNSON,

July 19, 1866. **President of the United States of America.**

To all and singular to whom these presents shall come, Greeting:

Preamble. Whereas a Treaty was made and concluded at the city of Washington, in the District of Columbia, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, by and between Dennis N. Cooley and Elijah Sells, Commissioners, on the part of the United States, and Smith Christie, White Catcher, James McDaniel, S. H. Benge, Daniel H. Ross, and J. B. Jones, delegates of the Cherokee nation, appointed by resolution of the national council, on the part of said Cherokee nation, which treaty is in the words and figures following, to wit:

Contracting parties. Articles of Agreement and Convention at the City of Washington on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the United States, represented by Dennis N. Cooley, Commissioner of Indian affairs, [and] Elijah Sells, superintendent of Indian affairs for the southern superintendency, and the Cherokee nation of Indians, represented by its delegates, James McDaniel, Smith Christie, White Catcher, S. H. Benge, J. B. Jones, and Daniel H. Ross—John Ross, principal chief of the Cherokees, being too unwell to join in these negotiations.

PREAMBLE.

Whereas existing treaties between the United States and the Cherokee nation are deemed to be insufficient, the said contracting parties agree as follows, viz:

Pretended treaty declared void.

Article I. The pretended treaty made with the so-called confederate states by the Cherokee nation on the seventh day of October, eighteen hundred and sixty-one, and repudiated by the national council of the Cherokee nation on the eighteenth day of February, eighteen hundred and sixty-three, is hereby declared to be void.

Amnesty.

Article II. Amnesty is hereby declared by the United States and the Cherokee nation for all crimes and misdemeanors committed by one Cherokee on the person or property of another Cherokee, or of a citizen of the United States, prior to the fourth day of July, eighteen hundred and sixty-six; and no right of action arising out of wrongs committed in aid or in the suppression of the rebellion shall be prosecuted or maintained in the courts of the United States or in the courts of the Cherokee nation.

Amendment. *Post* p. 807.

Confiscation laws repealed and former owners restored to their rights.

Article III. The confiscation laws of the Cherokee nation shall be repealed, and the same, and all sales of farms, and improvements on real estate, made or pretended to be made in pursuance thereof, are hereby agreed and declared to be null and void, and the former owners of such property so sold, their heirs or assigns, shall have the right peaceably to reoccupy their homes, and the purchaser under the confiscation laws, or his heirs or assigns, shall be repaid by the treasurer of the Cherokee nation from the national funds, the money paid for said property, and the cost of permanent improvements on such real estate, made thereon since the confiscation sale; the cost of such improvements to be fixed by a commission, to be composed of one person designated by the Secretary of the Interior and one by the principal chief of the nation, which two may appoint a third in cases of disagreement, which cost so fixed shall be refunded to the national treasurer by the returning Cherokees within three years from the ratification hereof.

Improvements

Cherokees, freed persons, and free negroes may elect to reside where.

Article IV. All the Cherokees and freed persons who were formerly slaves to any Cherokee, and all free negroes not having been such slaves, who resided in the Cherokee nation prior to June first, eighteen hundred and sixty-one, who may within two years elect not to reside northeast of the Arkansas river and southeast of Grand river, shall have the right to settle in and occupy the Canadian district southwest of the Arkansas river, and also all that tract of country lying northwest of Grand river, and bounded on the southeast by Grand river and west by the Creek reservation to the northeast corner thereof; from thence west on the north line of the Creek reservation to the ninety-sixth degree of west longitude; and thence north on said line of longitude so far that a line due east to Grand river will include a quantity of land equal to one hundred and sixty acres for each person who may so elect to reside in the territory above described in this article:

Proviso.

Provided, That that part of said district north of the Arkansas river shall not be set apart until it shall be found that the Canadian district is not sufficiently large to allow one hundred and sixty acres to each person desiring to obtain settlement under the provisions of this article.

Those so electing to reside there may elect local officers, judges, &c.

Article V. The inhabitants electing to reside in the district described in the preceding article shall have the right to elect all their local officers and judges, and the number of delegates to which by their numbers they may be entitled in any general council to be established in the Indian territory under the provisions of this treaty, as stated in Article XII.; and to control all their local affairs, and to establish all necessary police regulations and rules for the administration of justice in said district, not inconsistent with the constitution of the Cherokee nation or the laws

Proviso.

of the United States; Provided, The Cherokees residing in said district shall enjoy all the rights and privileges of other Cherokees who may elect to settle in said district as hereinbefore provided, and shall hold the same rights and privileges and be subject to the same liabilities as those

who elect to settle in said district under the provisions of this treaty; Provided also, That if any such police regulations or rules be adopted which, in the opinion of the President, bear oppressively on any citizen of the nation, he may suspend the same. And all rules or regulations in said district, or in any other district of the nation, discriminating against the citizens of other districts, are prohibited, and shall be void. Proviso.

Article VI. The inhabitants of the said district hereinbefore described shall be entitled to representation according to numbers in the national council, and all laws of the Cherokee nation shall be uniform throughout said nation. And should any such law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly or injuriously in said district, he is hereby authorized and empowered to correct such evil, and to adopt the means necessary to secure the impartial administration of justice, as well as a fair and equitable application and expenditure of the national funds as between the people of this and of every other district in said nation. Representation in national council. Unequal laws.

Article VII. The United States court to be created in the Indian territory; and until such court is created therein, the United States district court, the nearest to the Cherokee nation, shall have exclusive original jurisdiction of all causes, civil and criminal, wherein an inhabitant of the district hereinbefore described shall be a party, and where an inhabitant outside of said district, in the Cherokee nation, shall be the other party, as plaintiff or defendant in a civil cause, or shall be defendant or prosecutor in a criminal case, and all process issued in said district by any officer of the Cherokee nation, to be executed on an inhabitant residing outside of said district, and all process issued by any officer of the Cherokee nation outside of said district, to be executed on an inhabitant residing in said district, shall be to all intents and purposes null and void, unless indorsed by the district judge for the district where Courts. Process.

such process is to be served, and said person, so arrested, shall be held in custody by the officer so arresting him, until he shall be delivered over to the United States marshal, or consent to be tried by the Cherokee court: Provided, That any or all the provisions of this treaty, which make any distinction in rights and remedies between the citizens of any district and the citizens of the rest of the nation, shall be abrogated whenever the President shall have ascertained, by an election duly ordered by him, that a majority of the voters of such district desire them to be abrogated, and he shall have declared such abrogation: And provided further, That no law or regulation, to be hereafter enacted within said Cherokee nation or any district thereof, prescribing a penalty for its violation, shall take effect or be enforced until after ninety days from the date of its promulgation, either by publication in one or more newspapers of general circulation in said Cherokee nation, or by posting up copies thereof in the Cherokee and English languages in each district where the same is to take effect, at the usual place of holding district courts.

Proviso.

Proviso.

Licenses to trade not to be granted unless &c.

Article VIII. No license to trade in goods, wares, or merchandise *merchandise* shall be granted by the United States to trade in the Cherokee nation, unless approved by the Cherokee national council, except in the Canadian district, and such other district north of Arkansas river and west of Grand river occupied by the so-called southern Cherokees, as provided in Article IV. of this treaty.

Slavery, &c. not to exist.

Article IX. The Cherokee nation having, voluntarily, in February, eighteen hundred and sixty-three, by an act of their national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation otherwise than in the punishment of crime, whereof the party shall have been duly convicted, in accordance with laws applicable to all the members of said tribe alike. They further agree that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the com-

Freedmen.

mencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees: Provided, That owners of slaves so emancipated in the Cherokee nation shall never receive any compensation or pay for the slaves so emancipated.

No pay for emancipated slaves.

Article X. Every Cherokee and freed person resident in the Cherokee nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian territory.

Farm products may be sold, &c.

Article XI. The Cherokee nation hereby grant a right of way not exceeding two hundred feet wide, except at stations, switches, water stations, or crossing of rivers, where more may be indispensable to the full enjoyment of the franchise herein granted, and then only two hundred additional feet shall be taken, and only for such length as may be absolutely necessary, through all their lands, to any company or corporation which shall be duly authorized by Congress to construct a railroad from any point north to any point south, and from any point east to any point west of, and which may pass through, the Cherokee nation. Said company or corporation, and their employes and laborers, while constructing and repairing the same, and in operating said road or roads, including all necessary agents on the line, at stations, switches, water tanks, and all others necessary to the successful operation of a railroad, shall be protected in the discharge of their duties, and at all times subject to the Indian intercourse laws, now or which may hereafter be enacted and be in force in the Cherokee nation.

Right of way for railroads.

Article XII. The Cherokees agree that a general council, consisting of delegates elected by each nation or tribe lawfully residing within the Indian territory, may be annually convened in said territory, which council shall be organiz-

General council.

ed in such manner and possess such powers as hereinafter prescribed.

Census.

First. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said council, a census or enumeration of each tribe lawfully resident in said territory shall be taken under the direction of the commissioner of Indian affairs, who for that purpose is hereby authorized to designate and appoint competent persons, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

First general council, how composed.

Second. The first general council shall consist of one member from each tribe, and an additional member for each one thousand Indians, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said territory, and shall be selected by said tribes respectively, who may assent to the establishment of said general council; and if none should be thus formally selected by any nation or tribe so assenting, the said nation or tribe shall be represented in said general council by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank as recognized in tribal usage, in the same number and proportion as above indicated. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe assenting to the establishment of such council the number of members of such council to which they shall be entitled under the provisions of this article, and the persons entitled to represent said tribes shall meet at such time and place as he shall approve; but thereafter the time and place of the sessions of said council shall be determined by its action: Provided, That no session in any one year shall exceed the term of thirty days: And provided, That special sessions of said council may be called by the Secretary of the Interior whenever in his judgment the interest of said tribes shall require such special session.

Time and place of first meeting.

Sessions not to exceed 30 days.

Special sessions.

Powers of general council

Third. Said general council shall have power to legislate upon matters pertaining to the intercourse and relations of the Indian tribes and nations and colonies of freedmen resident in said territory; the arrest and extradition of criminals and offenders escaping from one tribe to another, or into any community of freedmen; the administration of justice between members of different tribes of said territory and persons other than Indians and members of said tribes or nations; and the common defence and safety of the nations of said territory.

Laws, when to take effect.

All laws enacted by such council shall take effect at such time as may therein be provided, unless suspended by direction of the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States. Nor shall said council legislate upon matters other than those above indicated: Provided, however, That the legislative power of such general council may be enlarged by the consent of the national council of each nation or tribe assenting to its establishment, with the approval of the President of the United States.

Legislative power may be enlarged.

President of council.

Fourth. Said council shall be presided over by such person as may be designated by the Secretary of the Interior.

Secretary of council.

Fifth. The council shall elect a secretary, whose duty it shall be to keep an accurate record of all the proceedings of said council, and who shall transmit a true copy of all such proceedings, duly certified by the presiding officer of such council, to the Secretary of the Interior, and to each tribe or nation represented in said council, immediately after the sessions of said council shall terminate. He shall be paid out of the treasury of the United States an annual salary of five hundred dollars.

Pay.

Pay of members of council.

Sixth. The members of said council shall be paid by the United States the sum of four dollars per diem during the

term actually in attendance on the sessions of said council, and at the rate of four dollars for every twenty miles necessarily traveled by them in going from and returning to their homes, respectively, from said council, to be certified by the secretary and president of the said council.

Courts.

Article XIII. The Cherokees also agree that a court or courts may be established by the United States in said territory, with such jurisdiction and organized in such manner as may be prescribed by law: Provided, That the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee nation, except as otherwise provided in this treaty.

Lands for missionary or educational purposes;

Article XIV. The right to the use and occupancy of a quantity of land not exceeding one hundred and sixty acres, to be selected according to legal subdivisions in one body, and to include their improvements, and not including the improvements of any member of the Cherokee nation, is hereby granted to every society or denomination which has erected, or which with the consent of the national council may hereafter erect, buildings within the Cherokee country for missionary or educational purposes. But no land thus granted, nor buildings which have been or may be erected thereon, shall ever be sold or [o]therwise disposed of except with the consent and approval of the Cherokee national council and of the Secretary of the Interior. And whenever any such lands or buildings shall be sold or disposed of, the proceeds thereof shall be applied by said society or societies for like purposes within said nation, subject to the approval of the Secretary of the Interior.

not to be sold, except, &c.;

proceeds of sale.

The United States may settle civilized Indians in the Cherokee country.

Article XV. The United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96 degrees, on such terms as may be agreed upon by any

such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee nation, on equal terms in every respect with native citizens. And should any such tribe, thus settling in said country, decide to preserve their tribal organizations, and to maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee nation, they shall have a district of country set off for their use by metes and bounds equal to one hundred and sixty acres, if they should so decide, for each man, woman, and child of said tribe, and shall pay for the same into the national fund such price as may be agreed on by them and the Cherokee nation, subject to the approval of the President of the United States, and in cases of disagreement the price to be fixed by the President.

How may be made part of Cherokee nation.

Those wishing to preserve tribal organization, to have land set off to them;

And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country, and thence afterwards they shall enjoy all the rights of native Cherokees. But no Indians who have no tribal organizations, or who shall determine to abandon their tribal organizations, shall be permitted to settle east of the 96th degree of longitude without the consent of the Cherokee national council, or of a delegation duly appointed by it, being first obtained. And no Indians who have and determine to preserve their tribal or-

to pay sum into national fund.

Limits of places of settlement.

ganizations shall be permitted to settle, as herein provided, east of the 96th degree of longitude without such consent being first obtained, unless the President of the United States, after a full hearing of the objections offered by said council or delegation to such settlement, shall determine that the objections are insufficient, in which case he may authorize the settlement of such tribe east of the 96th degree of longitude.

Where the United States may settle friendly Indians.

Article XVI. The United States may settle friendly Indians in any part of the Cherokee country west of 96th degree, to be taken in a compact form in quantity not exceeding one hundred and sixty acres for each member of each of said tribes thus to be settled; the boundaries of each of said districts to be distinctly marked, and the land conveyed in fee simple to each of said tribes to be held in common or by their members in severalty as the United States may decide.

Lands.

Said lands thus disposed of to be paid for to the Cherokee nation at such price as may be agreed on between the said parties in interest subject to the approval of the President; and if they should not agree, then the price to be fixed by the President.

Possession and jurisdiction over such lands.

The Cherokee nation to retain the right of possession of and jurisdiction over all of said country west of 96th degrees of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied.

Cession of lands to the United States in trust.

Article XVII. The Cherokee nation hereby cedes, in trust to the United States, the tract of land in the State of Kansas which was sold to the Cherokees by the United States, under the provisions of the second article of the treaty of 1835; and also that strip of the land ceded to the nation by the fourth article of said treaty which is included in the State of Kansas, and the Cherokees consent that said lands may be included in the limits and jurisdiction of the said State.

The lands herein ceded shall be surveyed as the public lands of the United States are surveyed, under the direction of the commissioner of the general land office, and shall be appraised by two disinterested persons, one to be designated by the Cherokee national council and one by the Secretary of the Interior, and, in case of disagreement, by a third person, to be mutually selected by the aforesaid appraisers. The appraisement to be not less than an average of one dollar and a quarter per acre, exclusive of improvements.

Lands to be surveyed and appraised;

And the Secretary of the Interior shall from time to time as such surveys and appraisements are approved by him, after due advertisements for sealed bids, sell such lands to the highest bidders for cash in parcels not exceeding one hundred and sixty acres, and at not less than the appraised value: Provided, That whenever there are improvements of the value of fifty dollars made on the lands not being mineral, and owned and personally occupied by any person for agricultural purposes at the date of the signing hereof, such person so owning, and in person residing on such improvements, shall, after due proof, made under such regulations as the Secretary of the Interior may prescribe, be entitled to buy, at the appraised value, the smallest quantity of land in legal subdivisions which will include his improvements, not exceeding in the aggregate one hundred and sixty acres; the expenses of survey and appraisement to be paid by the Secretary out of the proceeds of sale of said land: Provided, That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said neutral lands in a body to any responsible party, for cash, for a sum not less than eight hundred thousand dollars.

may be sold to highest bidder.

Improvements

Proviso.

Amendment. *Post*, p. 807.

Article XVIII. That any lands owned by the Cherokees in the State of Arkansas and in States east of the Mississippi may be sold by the Cherokee nation in such manner as their national council may prescribe, all such sales being first approved by the Secretary of the Interior.

Sales by Cherokees of lands in Arkansas

Heads of families.

Article XIX. All Cherokees being heads of families residing at the date of the ratification of this treaty on any of the lands herein ceded, or authorized to be sold, and desiring to remove to the reserved country, shall be paid by the purchasers of said lands the value of such improvements, to be ascertained and appraised by the commissioners who appraise the lands, subject to the approval of the Secretary of the Interior; and if he shall elect to remain on the land now occupied by him, shall be entitled to receive a patent from the United States in fee simple for three hundred and twenty acres of land to include his improvements, and thereupon he and his family shall cease to be members of the nation.

Lands reserved to be surveyed and allotted.

Article XX. Whenever the Cherokee national council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them, at the expense of the United States.

Boundary line to be run and marked.

Article XXI. It being difficult to learn the precise boundary line between the Cherokee country and the States of Arkansas, Missouri, and Kansas, it is agreed that the United States shall, at its own expense, cause the same to be run as far west as the Arkansas, and marked by permanent and conspicuous monuments, by two commissioners, one of whom shall be designated by the Cherokee national council.

Agent of Cherokees to examine accounts, books, &c.

Article XXII. The Cherokee national council, or any duly appointed delegation thereof, shall have the privilege to appoint an agent to examine the accounts of the nation with the government of the United States at such time as they may see proper, and to continue or discharge such agent, and to appoint another, as may be thought best by such council or delegation; and such agent shall have free access to all accounts and books in the executive departments relating to the business of said Cherokee nation, and an opportunity to examine the same in the presence of the officer having such books and papers in charge.

Article XXIII. All funds now due the nation, or that may hereafter accrue from the sale of their lands by the United States as hereinbefore provided for, shall be invested in United States registered stocks at their current value, and the interest on all said funds shall be paid semi-annually on the order of the Cherokee nation, and shall be applied to the following purposes, to wit: Thirty-five per cent shall be applied for the support of the common schools of the nation and educational purposes; fifteen per cent for the orphan fund, and fifty per cent for general purposes, including reasonable salaries of district officers; and the Secretary of the Interior, with the approval of the President of the United States, may pay out of the funds due the nation, on the order of the national council or a delegation duly authorized by it, such amount as he may deem necessary to meet outstanding obligations of the Cherokee nation, caused by the suspension of the payment of their annuities, not to exceed the sum of one hundred and fifty thousand dollars.

Funds, how to be invested.

Interest, how to be paid.

Article XXIV. As a slight testimony for the useful and arduous services of the Rev. Evan Jones, for forty years a missionary in the Cherokee nation, now a cripple, old and poor, it is agreed that the sum of three thousand dollars be paid to him, under the direction of the Secretary of the Interior, out of any Cherokee fund in or to come into his hands not otherwise appropriated.

Payment to Rev. Evan Jones.

Article XXV. A large number of the Cherokees who served in the army of the United States having died, leaving no heirs entitled to receive bounties and arrears of pay on account of such service, it is agreed that all bounties and arrears for service in the regiments of Indian United States volunteers which shall remain unclaimed by any person legally entitled to receive the same for two years from the ratification of this treaty, shall be paid as the national council may direct, to be applied to the foundation and support of an asylum for the education of orphan children, which asylum shall be under the control of the

Bounties and arrears for services as Indian volunteers, how to be paid.

national council, or of such benevolent society as said council may designate, subject to the approval of the Secretary of the Interior.

Possession and protection guaranties.

Article XXVI. The United States guarantee to the people of the Cherokee nation the quiet and peaceable possession of their country and protection against domestic feuds and insurrections and against hostilities of other tribes. They shall also be protected against inter[r]uptions or intrusion from all unauthorized citizens of the United States who may attempt to settle on their lands or reside in their territory. In case of hostilities among the Indian tribes, the United States agree that the party or parties commencing the same shall, so far as practicable, make reparation for the damages done.

Military posts in Cherokee Nation.

Article XXVII. The United States shall have the right to establish one or more military posts or stations in the Cherokee nation, as may be deemed necessary for the proper protection of the citizens of the United States lawfully residing therein and the Cherokees and other citizens of the Indian country. But no sutler or other person connected therewith, either in or out of the military organization, shall be permitted to introduce any spirit[u]ous, vinous, or malt liquors into the Cherokee nation, except the medical department proper, and by them only for strictly medical purposes. And all persons not in the military service of the United States, not citizens of the Cherokee nation, are to be prohibited from coming into the Cherokee nation, or remaining in the same, except as herein otherwise provided; and it is the duty of the United States Indian agent for the Cherokees to have such persons, not lawfully residing or sojourning therein, removed from the nation, as they now are, or hereafter may be, required by the Indian intercourse laws of the United States.

Spirituous, &c., liquors forbidden, except, &c.

Certain persons prohibited from coming into the nation.

Payment for certain provisions and clothing.

Article XXVIII. The United States hereby agree to pay for provisions and clothing furnished the army under Appotholehala in the winter of 1861 and 1862, not to exceed the sum of ten thousand dollars, the accounts to be ascertained and settled by the Secretary of the Interior.

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Expenses of Cherokee delegations.

Article XXIX. The sum of ten thousand [dollars,] or so much thereof as may be necessary to pay the expenses of the delegates and representatives of the Cherokees invited by the government to visit Washington for the purposes of making this treaty, shall be paid by the United States on the ratification of this treaty.

Amendment. *Post*, p. 807.

Payment of certain losses by missionaries, &c.

Article XXX. The United States agree to pay to the proper claimants all losses of property by missionaries or missionary societies, resulting from their being ordered or driven from the country by United States agents, and from their property being taken and occupied or destroyed by *by* United States troops, not exceeding in the aggregate twenty thousand dollars, to be ascertained by the Secretary of the Interior.

Inconsistent treaty provisions annulled.

Article XXXI. All provisions of treaties, heretofore ratified and in force, and not inconsistent with the provisions of this treaty, are hereby reaffirmed and declared to be in full force; and nothing herein shall be construed as an acknowledgment by the United States, or as a relinquishment by the Cherokee nation of any claims or demands under the guaranties of former treaties, except as herein expressly provided.

Execution

In testimony whereof, the said commissioners on the part of the United States, and the said delegation on the part of the Cherokee nation, have hereunto set their hands and seals, at the city of Washington, this *ninth* [nineteenth] day of July, A. D. one thousand eight hundred and sixty-six.

D. N. COOLEY, *Com'r Ind. Affairs.*
ELIJAH SELLS, *Sup't Ind. Affs.*
SMITH CHRISTIE,
WHITE CATCHER,
JAMES McDANIEL,
S. H. BENGE,
DANL. H. ROSS,
J. B. JONES.
Delegates of the Cherokee Nation, appointed by Resolution of the National Council.

In presence of—
W. H. WATSON,
J. W. WRIGHT.

Signatures witnessed by the following-named persons, the following interlineations being made before signing: On page 1st the word "the" interlined, on page 11 the word "the" struck out, and to said page 11 a sheet attached requiring publication of laws; and on page 34th the word "ceded" struck out and the words "neutral lands" inserted. Page 47½ added relating to expenses of treaty.

THOMAS EWING, JR.,
WM. A. PHILLIPS,
J. W. WRIGHT.

Ratification with amendments.

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-seventh day of July, one thousand eight hundred and sixty-six, advise and consent to the ratification of the same, with amendments, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES.
July 27, 1866.

Resolved, (two-thirds of the senators present concurring,) That the Senate advise and consent to the ratification of the articles of agreement and convention made at the city of Washington, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the United States and the Cherokee nation of Indians, with the following

AMENDMENTS:

Ante, p. 799.

1st. Insert at the end of Article II. the following:

But the Cherokee nation stipulate and agree to deliver up to the United States, or their duly authorized agent, any or all public property, particularly ordnance, ordnance stores, arms of all kinds, and quartermasters' stores, in their possession or control, which belonged to the United States or the so-called confederate states, without any reservation.

2d. Strike out the last proviso in Article XVII, and insert in lieu thereof the following: *Ante*, p. 805.

Provided, That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said lands not occupied by actual settlers at the date of the ratification of this treaty, not exceeding one hundred and sixty acres to each person entitled to pre-emption under the pre-emption laws of the United States, in a body, to any responsible party, for cash, for a sum not less than one dollar per acre.

3d. Insert at the end of Article XXIX. the following: *Ante*, p. 806.

And the Secretary of the Interior shall also be authorized to pay the reasonable costs and expenses of the delegates of the southern Cherokees.

The moneys to be paid under this article shall be paid out of the proceeds of the sales of the national lands in Kansas.

Attest:

J. W. FORNEY, *Secretary.*

Amendments assented to.

And whereas the foregoing amendments having been fully explained and interpreted to the aforenamed delegates of the Cherokee nation, they did, on the thirty-first day of July, one thousand eight hundred and sixty-six, give, on behalf of said nation, their free and voluntary assent to said amendments, in the words and figures following, to wit:

Whereas the Senate of the United States did, on the twenty-seventh day of July, eighteen hundred and sixty-six, advise and consent to the ratification of the articles of agreement and convention, made at the city of Washington, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the United States and the Cherokee nation of Indians, with the following

AMENDMENTS, to wit:

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3d. Strike out the last proviso in Article XVII, and insert in lieu thereof the following:

Provided, That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said lands not occupied by actual settlers at the date of the ratification of this treaty, not exceeding one hundred and sixty acres to each person entitled to pre-emption under the pre-emption laws of the United States, in a body, to any responsible party, for cash, for a sum not less than one dollar per acre.

3d. Insert at the end of Article XXIX. the following:

And the Secretary of the Interior shall also be authorized to pay the reasonable costs and expenses of the delegates of the southern Cherokees.

The moneys to be paid under this article shall be paid out of the proceeds of the sales of the national lands in Kansas.

Now, therefore, we, the delegates on the part of the said Cherokee nation, do hereby assent and agree to the said amendments above written, the same having been explained to us and being fully understood by us.

Witness our hands and seals, this thirty-first day of July, A. D. eighteen hundred and sixty-six, at Washington, D. C.

SMITH CHRISTIE.	[SEAL.]
WHITE CATCHER.	[SEAL.]
JAMES McDANIEL.	[SEAL.]
S. H. BENGE.	[SEAL.]
DANL. H. ROSS.	[SEAL.]
J. B. JONES.	[SEAL.]

In presence of—

D. N. COOLEY, *Com'r Ind. Affairs.*
J. HARLAN, *U. S. Ind. Agent.*
CHARLES E. MIX,
J. W. WRIGHT,
W. R. IRWIN.

Proclaimed.

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the twenty-seventh of July, one thousand eight hundred and sixty-six, accept, ratify, and confirm the said treaty with the amendments as aforesaid.

In testimony whereof I have signed my name hereto, and have caused the seal of the United States to be affixed.

Done at the city of Washington, this eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-six and of the Independence of the United States of America the ninety-first.

[SEAL.]

ANDREW JOHNSON.

By the President:

HENRY STANBERY, *Acting Secretary of State.*

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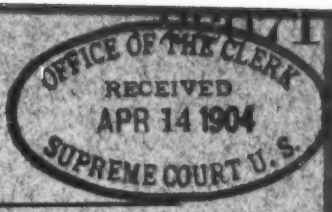

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 240.

THE DELAWARE INDIANS, RESIDING IN THE CHEROKEE NATION, ETC., APPELLANTS,

vs.

THE CHEROKEE NATION, RESPONDENT.

PETITION AND BRIEF FOR REHEARING.

Filed April 14, 1904.

WALTER S. LOGAN,
CHARLES M. DEMOND,
Attorneys for Appellant.

GEORGE S. CHASE.
Of Counsel.

THE LAW REPORTER COMPANY, PRINTERS, WASHINGTON, D. C.

22072

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The said appellants, the Delaware Indians, residing in the Cherokee Nation, respectfully petition the court for a rehearing and reargument of the above-entitled cause for the following reasons:

First. That the meaning of said decision may be made more definite and [illegible]in.

Second. Because [illegible]e parties in interest in said suit can not agree as to the purport and scope of said decision.

Third. For the reason that a difference of opinion has arisen in the Executive Departments as to the proper interpretation to be given to said decision.

Fourth. For the reason that the interpretation given to said decision by the respondent is widely different from that entertained by the appellants.

Fifth. In order that, if the interpretation given to said

decision by the appellants shall be found to be not in accord with the present views of the court, counsel may be heard upon the merits; all of which will more fully appear from the brief filed herewith.

WALTER S. LOGAN,
CHARLES M. DEMOND,
Attorneys for Appellant.

GEORGE S. CHASE.
Of Counsel.

BRIEF.

On February 23, 1904, this court rendered its decision in this case, which has led to a very great contrariety of opinion as to its scope and purpose. After stating the case the court almost immediately takes up the consideration of the case of the Cherokee Nation against Journeycake, reported in 155 U. S. 196, being a case between the same parties, and in which many of the same questions were involved as in the present controversy, though there are some differences not involving the questions to which it is desired to particularly call the attention of the court.

In the present case the court quotes extensively from the Journeycake case, and states that the force of the pertinent language used by Mr. Justice Brewer in that decision "has not been diminished in the light of subsequent examination, aided by the arguments and briefs of counsel now presented."

We understand that at least a part of the officers of the Interior Department, members of the Commission to the Five Civilized Tribes and some of those in authority in the Cherokee Nation, hold the decision to mean that only those registered Delawares who are *now living*, or who were living on the 1st day of September, 1902, are to receive 160 acres each on account of the purchase made by the Delaware tribe in 1867, while all other Delawares, who are members and citizens of the Cherokee Nation are to receive allotments as if they were native Cherokees only; yet nowhere in this decision do we find the expression "registered Delawares *now living*," nor even the expression "*living* registered Delawares," although if such had been the intention of the court, it would seem to have been the most natural and easy thing to have used this expression, which would have relieved the case of any possible ambiguity. Nor is it possible to adopt the construction contended for if the Journeycake case is to be approved and followed, for such contention is wholly incom-

patible with the plain declarations of the decision in that case.

In the opinion of the court in the case at bar (p. 8), the expression in the Journeycake case is quoted with approbation as follows, the italics being ours:

> "And as further consideration for the payment of this sum for the purchase of homes, the Delawares were guaranteed *not merely* the continued *occupancy* thereof, but *also*, that in case of a subsequent allotment in severalty of the entire body of lands among the members of the Cherokee Nation, they would receive an *aggregate amount* equal to that which they *had* purchased, and such distribution as would secure to them the homes upon which they had settled, together with their improvements," etc.

And in the closing paragraph of the opinion (p. 11), the court say:

> "We think a decree should have been entered finding the registered Delawares entitled to participate equally with the Cherokee citizens of Cherokee blood in the allotment of lands of the Cherokee Nation, with the addition that if there is not enough land to give to each citizen of the Nation 160 acres, then the registered Delawares shall be given that quantity, together with their improvements. In all other respects, the Cherokee citizens, whether of Delaware or Cherokee blood, should be given equal rights in the lands and funds of the Cherokee Nation."

The report of the Dawes Commission for 1903 shows that there were 195 registered Delawares living on December 31, 1903. At the time of the commencement of this suit, as shown by the record, there were 212 living, and at the date the allotments in the Cherokee Nation take effect (September 1, 1903), it is understood there were 205 living. If the contention of the other side as to the meaning of the decision in the case, to wit, that only *living* registered Delawares are to receive 160 acres each, should be taken as correct, and

the date when the Cherokee allotments become effective be taken as the time the Delaware allotments take effect, then the registered Delawares would receive only 32,800 acres, and the unregistered Delawares, stated by the Dawes Commission to be 835, would be entitled to 110 acres of average land each, making 91,850 acres; but as the Delaware lands are above the average, the unregistered class would probably not receive to exceed 80 acres each, making 66,800 acres, making the total lands allotable to the Delawares 99,600. In other words, by the decision as interpreted by the other side, the Delawares would receive 58,000 acres less than they purchased in 1867. This would be in direct conflict with the statements of this court, above set forth—

> "That in case of a subsequent allotment in severalty of the entire body of lands among the members of the Cherokee Nation, they (the registered Delawares) would receive an *aggregate amount equal to that which they had purchased.*"

The appellants have with microscopic care examined the opinion of this court in order to learn what basis, if any, there was for such an interpretation, and are fully confirmed in the opinion that the court intended by the term "registered Delawares" the registered Delawares so precisely described by the agreement of 1867 as "each individual of the Delaware tribe who has been enrolled upon a certain register made February 18, 1867, by the Delaware agent and on file in the Office of Indian Affairs, etc.," who have always been known to the Department and to Congress and to the court as the "registered Delawares."

There is no ground in the language of the opinion for the interpretation that the court intended by the term "registered Delawares" only a portion of the registered Delawares, or only the registered Delawares now living, or only the registered Delawares living on September 1, 1902, the date fixed by the Cherokee Allotment Act for enrolling Cherokee citizens, or only the registered Delawares living

July 1, 1902, the date of the approval of the Cherokee Allotment act, or only the living registered Delawares who were alive when the suit of the Delawares was brought against the Cherokee Nation, or only the "registered Delawares" who might be alive when the Dawes Commission should hereafter consider the application for an allotment to the registered Delawares applying. The limitation of the term "registered Delawares" to living registered Delawares and the fixing of any one of the above suggested dates for the purpose of determining how many living registered Delawares might be included or contemplated by the decree of this court would be purely arbitrary and without any authority whatever, as nothing in the opinion or in the decree justifies any such limitation.

We understand that such interpretation is based upon the argument that the purchase of 1867 was only an occupant right, or a life estate. And the apparent idea that the occupant right being a life estate, the guarantee, upon the contingency of allotment, of the "aggregate amount of land equal to that which they had purchased" (for occupancy), must also be a life estate, a conclusion entirely unwarranted. Such interpretation ignores the fact that the registered Delawares bought "*not merely*" an occupant right or life estate, *but also* the right that, in the event of an allotment, they "should receive an *aggregate* amount *equal* to that which they had purchased."

At the making of the agreement of 1867 the Delawares, it is true, bought a life estate, consisting of an occupant right, which an individual could transfer from place to place at will, but at the same time in 1867 each registered Delaware then and there bought for his $160 contributed to the Cherokee treasury the further right of an allotment of 160 acres *whenever the contingency of allotment should arise.*

If the allotment had been made in the summer of 1867 evidently each registered Delaware would have received his allotment of 160 acres, which he had bought at that

time. The right of the allotment vested in him in 1867 at the time the agreement was made and the register definitely established.

This honorable court (pages 5 to 9) hold that the Delawares did not acquire an estate in fee by the purchase of 1867, and suggest a number of reasons why the contention of the Delawares, that they had acquired "an estate in fee" by the purchase in 1867, was not well founded, as follows:

1. The agreement to sell to the Delawares 157,600 acres was conditioned that the land sold was "for their occupancy," which "does not import a holding beyond the life of the first taker, and is entirely inconsistent with the idea of permancy of tenure in the estate conveyed unless, etc."

2. That the lands sold remained "Cherokee lands," "subject to the same conditions and restrictions as are by the laws of the Cherokee Nation imposed upon the native citizens thereof; provided, that nothing herein shall confer the right to alienate, convey, or dispose of any such land except in accordance with the constitution and laws of said Cherokee Nation."

3. That the absence in the agreement between the Delawares and Cherokees of any provision as to the transfer of such occupant lands by inheritance, shows that it was not intended to grant a fee to these lands in 1867, at the time of making this agreement.

4. That the very fact that it was proposed in the agreement with the registered Delawares that—

> "in case the Cherokee lands shall hereafter be allotted among the members of said nation, the aggregate amount of land provided for the Delawares to include their improvements according to the legal subdivisions when surveys are made (that is to say one hundred and sixty acres for each individual) shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation"

demonstrates that it was not intended to pass the fee in 1867.

5. It is perfectly clear that if the occupant right bought in 1867 had been the equivalent of a fee to the land there would have been no occasion to guarantee 160 acres to each registered Delaware incorporated by the agreement of 1867 into the Cherokee Nation in case of allotment, or to guarantee them the aggregate. It was because the occupant right was not a good title that this guarantee in case of allotment was made.

In giving these reasons showing that the Delawares did not acquire a fee to the lands sold them for their occupancy in 1867 the court point out with great clearness that these considerations are addressed exclusively to the claim of the Delawares, that they had acquired an "estate in fee" to these lands in 1867 (Rec. p. 5) and say (Rec. p. 6) "We are here dealing with the *extent* of the title conveyed."

These reasons are all directed to the proposition that the Delawares did not acquire an "estate in fee" by the purchase of 1867, but only bought the occupant right subject to the laws of the Cherokee Nation regulating the settlement and occupancy of the Cherokee public domain by its citizens.

When the court comes to consider the other proposition, to wit, the guarantee of 160 acres to each Delaware incorporated by the articles (1867) into the Cherokee Nation *upon the contingency of an allotment*, there is nowhere any suggestion whatever that this right to an allotment constituted a life estate.

By its very nature it could not be a life estate. It was a vested right based on the contingency of a general allotment as then contemplated and conditionally provided for by the Cherokee treaty of 1866. The right once vested in the grantee must go to him or to his estate whenever the contingency of allotment occurs.

Congress, anticipating the death of persons entitled to allotment under the various Indian agreements in Indian

Territory, has long since put in force suitable laws governing inheritance of such allotment rights.

The registered Delawares bought the right to an allotment upon a contingency which might not occur for many years, which did not occur for thirty-five years. If it had occurred at once, every registered Delaware would have gotten his allotment of 160 acres.

By what reasoning can the Cherokee Nation plead that the right of a registered Delaware to an allotment of 160 acres, upon the contingency of allotment ceases to exist before the contingency has arisen?

The Delaware-Cherokee contract nowhere expresses the idea that the right of 985 registered Delawares to an allotment of 160 acres each and the guarantee to them of an aggregate amount of land equivalent to the land they had purchased (157,600) should be diminished by the death of a registered Delaware. The guarantee of an aggregate is an express and direct contradiction to such interpretation.

The registered Delaware under his occupant right was at liberty to transfer this occupant right from one place to another as often as he pleased up to the point when allotment was made. Then, whether he had exercised his occupant right or not, he was entitled to have allotted to him 160 acres of land subject to whatever rules might be laid down by competent authority for the making of such allotment. When the land was allotted the right of the Cherokee Nation to control such portion of the public domain necessarily ceased. Until such land was allotted it remained the land of the Cherokee Nation, subject to the rules controlling the Cherokee public domain. The reason why the Cherokee Nation limited the sale of 157,600 acres in 1867 to an occupant right, without the privilege of alienation and kept such lands subject to the Cherokee law, was for the reason that any other than this limited grant would have honeycombed the Cherokee domain by Delaware transfers with alien landholders over whom the Cherokee author-

ities could have exercised no control. This was the very thing which disintegrated the lands the Cherokees formerly held east of the Mississippi River and which led to their forced removal from that country.

Whenever allotment was agreed upon, however, this policy ceased. The Cherokee policy of communal land holding being abandoned by allotment, the land might become alienable or inheritable without being obnoxious to national policy.

The registered Delawares paid $157,600 for the occupant right to 157,600 acres, which could be transferred from one place to another, and which was in fact a constantly variable part of the public domain, and which occupant right was necessarily a mere life estate; but for the $157,600 the registered Delawares acquired *another right*, in case of allotment, to 157,600 acres to be definitely ascertained and determined upon that contingency, according to legal subdivisions, when surveys should be made, and, upon this contingency, the aggregate amount of land was guaranteed to them, and to every one of them, to wit, 160 acres to include their improvements, if any they had, "to each registered Delaware incorporated by these articles into the Cherokee Nation."

The registered Delawares bought "*not merely*" an occupant right to 160 acres each, which was a life estate, *but also* each of 985 registered Delawares bought then and there the right to an allotment of 160 acres upon the contingency of an allotment of the Cherokee domain. Each registered Delaware then and there paid $160 for the right to have allotted to him 160 acres whenever allotment took place. The contingent right to this allotment was vested in such registered Delaware at the moment the contract was concluded, the grant being *in presenti*. We think the court set this forth (Rec. p. 8) with perfect clearness, as follows:

> "In the Journeycake case, while it is true that the precise question was not the same as is now presented,

full consideration to all the terms of this contract was given in order to determine the interests of the Delawares in the Cherokee lands sold, and the court, speaking by Mr. Justice Brewer, used this pertinent language, the force of which has not been diminished in the light of subsequent examination aided by the arguments and briefs of counsel now presented.

"So far as the provision in the agreement for the purchase of homes is concerned, it will be perceived that no absolute title to these homes was granted. We may take notice of the fact that the Cherokees in their long occupation of this reservation had generally secured homes for themselves; that the laws of the Cherokee Nation provided for the appropriation by the several Cherokees of lands for personal occupation, and that this purchase by the Delawares was with the view of securing to the individual Delawares the like homes; that the lands thus purchased and paid for still remained a part of the Cherokee reservation. And as a further consideration for the payment of this sum for the purchase of homes, *the Delawares were guaranteed not merely* the continued occupancy thereof, *but also* that in case of a subsequent allotment in severalty of the entire body of lands among the members of the Cherokee Nation, *they should receive an aggregate amount equal to that which they had purchased*, and such a distribution as would secure to them the homes upon which they had settled, together with their improvements. So that if, when the allotments were made, there was for any reason not land enough to secure to each member of the Cherokees 160 acres, the Delawares were to have at least that amount, and the deficiency would have to be borne by the native Cherokees pro rata."

If "they should receive an aggregate amount equal to that which they had purchased" they would receive 157,600 acres, or 160 acres in allotment for each registered Delaware.

If the contention of the Cherokee Nation were true that only "the living" registered Delawares were entitled to an

allotment, then the registered Delawares, 205 persons, living September 1, 1903, the date of the Cherokee Allotment Act, would receive only 32,800 acres instead of 157,600 acres, the aggregate guaranteed the registered Delawares. The registered Delawares, in addition to the $157,600 paid the Cherokees for the contingent right of allotment of 160 acres each, also paid $121,824.28 that their children might have the same right of allotment with other Cherokee citizens.

The Cherokee interpretation is in direct conflict with the opinion of this court as above quoted, to wit:

> "That in case of a subsequent allotment in severalty of the entire body of lands among the members of the Cherokee Nation, they (the registered Delawares) should receive an aggregate amount equal to that which they had purchased" (157,600 acres).

We respectfully call attention to the use of the term "*equal to.*" It is not necessarily the same land they purchased for occupancy. It is an aggregate amount "*equal to*" such land in quantity, but which must be determined in its description by the incident of selection by the surveys and by the law controlling the allotment.

The Cherokee interpretation of the decision of this honorable court is understood to involve the proposition that an allotment can not be made to a registered Delaware unless he was living September 1, 1902; that it can not be made to a registered Delaware who died prior to that day, the date of the Cherokee allotment act.

Such a construction is not sustained by the principle of the allotment acts in force in any of the Five Civilized Tribes, nor is such rule in accord with the principle controlling the policy of the United States Government in dealing with the public domain.

There is a familiar saying that it is a poor rule that does not work both ways. If the dead Registered Delawares are not to be counted in determining the "aggregate amount"

of land to be allotted, then why were they counted when determining the "aggregate amount" of money to be paid? If the aggregate amount of land and aggregate amount of money did not become *fixed* when the roll was completed and approved, then why were two hundred dead registered Delawares counted in computing the amount of funds to be transferred to the Cherokees? In other words, if the roll, when complete, did not *fix* the aggregate number of acres, how did it come that it *did* fix the aggregate number of Delawares who were to be paid for at the rate of $160 each, dead or alive?

The decision, as interpreted by us, is in full harmony with the immemorial policy of the Government in disposing of the public domain, and of the rule now in full operation in allotting to the members of the Five Civilized Tribes.

In conveying title to the public lands, the method has always been to issue the patent in the name of the one who made settlement and proof, and became *entitled* to it, no matter how long he may have been dead at the time of the actual issuance of the patent. There are thousands of cases where patents have been issued to persons who have been dead ten, fifteen, or twenty years, and thousands more that have not been issued at all, but will be, at some future day, when some party in interest asks to have it done; and when issued they will run in the names of the entrymen who became entitled to them, no matter how long ago, no matter whether living or dead, and no matter how many times the property may have been transferred by sale, devise, inheritance, or other mesne process.

So in allotting lands to the members of the Five Civilized Tribes.

All Seminole Indians, whose names appear upon a certain roll and who were living December 31, 1899 (31 Stats. p. 250), are entitled to allotment of lands in the Seminole Nation, whether living or dead.

All Creek Indians whose names appear upon a certain

roll and who were living May 25, 1901, are entitled to allotment in the Creek Nation (see Public 200, approved June 30, 1902).

All Choctaw and Chickasaw citizens whose names appear upon a certain roll and who were living on July 1, 1902, are entitled to allotment in the *Choctaw and Chickasaw* Nation, whether living or dead (see Public 228, approved July 1, 1902).

All Cherokee citizens whose names appear upon a certain roll and who were living September 1, 1902, are entitled to allotment in the Cherokee Nation, whether living or dead (see Public 241, approved July 1, 1902).

Assuredly, then, the registered Delawares guaranteed 160 acres each in 1867 upon the contingency of an allotment of the Cherokee country are likewise entitled, living or dead, to the allotment then guaranteed. Indeed, to make assurance doubly sure, the aggregate amount was guaranteed so that not one of the 985 designated persons could fail to have the 160 acres duly allotted, living or dead, without breach of the contract. Each contributed $160 and each was guaranteed 160 acres in allotment.

The principle laid down in all of these agreements is, that when the right of allotment is vested by an agreement or contract, then the vested right is not lost by the death of the individual. The right to an allotment was vested in the registered Delawares in 1867, not on September 1, 1902, or any other convenient date.

This honorable court has said that the registered Delawares bought something more than an occupant right when they paid the sum of $157,600, as follows (p. 8):

> "And as a further consideration for the payment of this sum for the purchase of homes the Delawares were guaranteed *not merely* the continued occupancy thereof, *but also* that in case of a subsequent allotment in severalty of the entire body of lands among the members of the Cherokee Nation, *they should re-*

> *ceive an aggregate amount equal to that which they had purchased*, and such a distribution as would secure to them the homes upon which they had settled, together with their improvements."

The Cherokee-Delaware agreement of 1867 likewise says:

> "And in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that *the aggregate amount of land herein provided for the Delawares*, to include their improvements according to the legal subdivisions when surveys are made (that is to say, *one hundred and sixty acres for each individual*), shall be *guaranteed to each Delaware* incorporated by these articles into the Cherokee Nation."

The 160 acres guaranteed to each individual incorporated into the Cherokee Nation on the register of 1867 is not conditioned on such individual being alive on September 1, 1902.

The allotment right of 160 acres was vested in each registered Delaware in 1867 and not vested in him on September 1, 1902, and once vested in him it can not be taken from him without his consent.

If the registered Delawares were guaranteed *not merely* the occupant right, but also that they should receive upon allotment "an aggregate amount equal to that which they had purchased" (157,600 acres), how can the contention be set up that this aggregate should be diminished quarter-section by quarter-section as each registered Delaware died, until no right of allotment was left?

The apparent hiatus that would exist after the termination of the life estate in the case of a deceased Delaware before the additional right to an allotment should arise, presents no difficulty whatever, for the reason that his right to a life estate, as already discussed, does not attach to any particular piece of land, unless he may have desired to have it so, for the communal right of occupancy of all the Chero-

kees could be exercised in any part of the national domain and changed at will, and become fixed to a specific tract only in the contingency of an allotment. It is exactly similar to the case of a grant of land to a railroad which this court has held in a long line of decisions to be *in presenti*, but the grant has been declared to be a "float" until the happening of a contingency, i. e., the filing of a map of definite location, when the grant becomes fixed upon specific land. In the case of the Delaware purchase the life estate was in the nature of a float and could be enjoyed anywhere, until the happening of the contingency of allotment, at which time it ceased to exist and in its place arose the right to an allotment of 160 acres of specific land.

Who are the "registered Delawares?" Of whom does this class consist? The registered Delawares were those members of the Delaware tribe whose names were entered upon a certain register made by John G. Pratt, agent of said Indians, in February, 1867, and those whose names were added thereto within 30 days from the signing of the agreement of April 8, 1867. At the expiration of said 30 days, to wit, on May 8, 1867, the "Delaware register" became a *fixed thing*, and the Indians whose names appear thereon became then and for all time the "registered Delawares."

As appears from the official register on file in the Indian Office, and which is referred to in the record and by stipulation made a part of it, and is presented to the court for its inspection, twelve of the Delawares whose names were placed thereon were dead *before said roll was completed*, on May 8, 1867, and yet $160 was paid for each of them. Why? Simply because their names went to make up the *aggregate* number, for whom an "aggregate amount of land" was being purchased, and once on the roll they remained there, the aggregate amount of money and the aggregate amount of land being fixed and determined by the roll, which was 985 times 160. As shown by the record, before the funds were transferred or the land taken possession of, more than

two hundred had died, but their shares were paid for in the same manner and for the same reason.

This is in direct line with the thought and expressions of the agreement of 1867, which contains this pertinent language:

> "That the aggregate amount of land herein provided for the Delawares, to include their improvements, according to the legal subdivisions when surveys are made (that is to say, 160 acres for each individual), shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation."

This guarantee of 160 acres to *each Delaware* whose name was entered by Agent Pratt upon his register which was completed on May 8, 1867, was an entirely different thing from the occupant right referred to by the court, and was evidently the right which the court in this case and in the Journeycake case had in mind when they declared that *besides* the right of equal participation with Cherokees, there was guaranteed to them, whenever allotments should be made—

> "the *addition* that if there is not enough land to give to each citizen of the nation 160 acres, then the registered Delawares shall be given that quantity together with their improvements."

This guarantee of 160 acres to each registered Delaware was expressly a contingency which was to happen in the indefinite future, the language in the Journeycake case being:

> "So that if, *when* the allotment was made there was for any reason not land enough to secure to each member of the Cherokees 160 acres, the Delawares were to have at least that amount, and the deficiency would have to be borne by the native Cherokees pro rata."

"*When* the allotment was made," is the same as to say "*whenever* the allotment was made," etc., which contingency

might occur in one year, in five years, in fifty years, or when every Delaware upon this register had died. It was in fact delayed thirty years, and delayed by the Cherokee Nation. The contingency of allotment was evidently not expected to happen immediately, and if it was to be delayed at all, *surely the length of the* delay could in no way affect the principle involved.

The court distinctly sets forth that the very stipulation to secure to the Delawares, in the contingency of an allotment, *the aggregate amount* of land provided for the registered Delawares was entirely superfluous if the right of occupancy conveyed to the Delawares prior to allotment had been a fee or the equivalent to a fee. This proposition is wholly satisfactory to us, and is in entire harmony with the interpretation of this decision which we entertain, that is to say, that under the agreement of 1867 there was secured to each Delaware whose name was entered upon the Delaware register, 160 acres of land for life, "with the addition" that when (whenever) an allotment should take place there should be allotted to each Indian whose name appeared upon said register 160 acres of land, being "the aggregate amount *equal to* that which they had purchased," and being 985 times 160 acres, or 157,600 acres "in the aggregate."

Had the lands of the Cherokee Nation been surveyed at once, after said agreement was entered into, as was promised, and as was provided in the treaties of July 4 and August 11, 1866, and been then allotted, there would have been no question of the right of the Delawares to the full measure of the land paid for. Is their estate, then, to become a disappearing quantity, growing less and less, day by day, as their numbers decrease, and finally disappearing, by no fault of their own, but by reason of the laches of the Government and of the Cherokee Nation, which, by preventing and defeating allotments in severalty, is permitted to enjoy great profit from its own neglect? During all

this time the Delawares have been ever ready and insistent that allotments should be taken in severalty, but their requests and petitions have been disregarded.

The Journeycake decision further states that in giving the Delawares the "aggregate amount" of land purchased, such a distribution "would secure to them the homes upon which they *had settled*, together with their improvements." Unless the interpretation here contended for be the true one, this result could never be accomplished.

After their removal and settlement in the Cherokee Nation in 1868, and the payment for their lands and rights in said Nation, the Delawares still possessed a large fund in the hands of the Government, amounting to about $1,000,000, upon which they were receiving interest at the rate of 5 per cent. per annum, yielding them a permanent and regular income. They were urged by the Cherokees and others to request that this fund be paid to them per capita, and many reasons were urged upon them to induce them to take steps to have this fund so disbursed. Finally yielding to this pressure, they requested Congress to enact the necessary legislation. It was urged by the Cherokees that the money could be profitably spent by the Delawares in improving their farms.

On March 18, 1890, the Cherokee delegation, then in Washington, Messrs. Adair and Bushyhead, together with the principal chief of the nation, J. B. Mayes, presented to the Committees on Indian Affairs of Congress a memorial urging legislation for the disbursement of this fund to the Delawares, in which, among other things, as reasons why this action should be taken, they say:

> "Favorable opportunities for investment are everywhere present. The rapid improvement of our country makes it plainly apparent that all choice bodies of land will soon be occupied, and those of our citizens are fortunate who have the means to locate and improve these lands before they are all taken up," etc.

A perusal of this memorial will show the ingenious arguments resorted to by the Cherokee delegation to secure the passage of this legislation and the expenditure of this large amount of money in the Cherokee Nation.

Yielding to this persuasion, Congress, on March 3, 1891, appropriated one-half of the money and provided for its payment under the direction of the Secretary of the Interior. Before making the payment, however, Mr. Leo E. Bennett, at that time agent for the Five Civilized Tribes, made a thorough investigation as to the condition of the Delawares and the purposes to which the money was to be applied, submitting a list of questions to each Delaware and receiving his answers thereto, it appearing to be the purpose of the Department that this fund should be expended by the Delawares *only in the improvement of their farms and homes.* After making this investigation Mr. Bennett made a report, in which he says:

> "Besides the questions here printed, the question, 'To what use do you propose applying your principal funds if paid to you?' was asked each head of family. The answers were, almost without exception, 'Improve my place.' . . . Their houses are for the most part well built and substantial, and their fences, outhouses, and other improvements are well taken care of. No one who has visited the Delaware settlement could fail to note the fact that they are among the most thrifty and intelligent Indians in the entire Indian country."

Although this showing would seem to have been all that could have been expected or desired on the part of the Delawares, the Government seems to have decided that only one-half of the fund should be paid to them at that time, the other half being reserved until it could be seen that the first half had been applied to the improvements as contemplated, and the second half was not paid until 1893, when apparently the Department had become satisfied that all the first half had been strictly applied to the improve-

ment of the lands they had purchased under the agreement of April, 1867. In addition, nearly all of their portion of the proceeds of the sale of the outlet lands, which they received under this court's decision in the Journeycake case, amounting to $300,000, was also expended in the improvement of these lands. Thus it has resulted that by direction and cooperation of the Government, through its Department of the Interior, the Delaware lands, consisting of the aggregate amount of 157,600 acres "purchased" in 1867, and other parts of the Cherokee domain upon which the descendants of the original registered Delawares have from time to time settled, have been very highly improved and cultivated—more so than any other portion of the Cherokee Nation.

Are these the improvements to which the court in the Journeycake case had reference when it conveyed to the Delawares the hopeful and cheering message that there should be secured to them "the homes upon which they had settled, together with their improvements?" Unless the interpretation which we are now suggesting and which we believe to be the true and just one, is correct, then this message, instead of being one of hope and cheer, would become one of sorrow and consternation, for it would mean the confiscation, by strangers, of by far the larger portion of all these improvements and homes which the thrift, industry, and perseverance of the Delawares, in addition to the large expenditure of money so directed and compelled by the United States, have created.

A glance at the Delaware-Cherokee agreement will show that two of the Delawares who signed it, one being the principal chief, were illiterate, and signed by mark, while as a matter of fact the Cherokees were highly educated college men, the disparity in education and knowledge being extreme and apparent. Neither of the parties was sui juris, and both were wards of the Government. They had been brought to Washington to enter into a contract, to all

intents and purposes strictly in conformity with the provisions of the Delaware and Cherokee treaties with the United States of 1866, the only difference being that the Government not having itself become the purchaser of lands in the Cherokee Nation, as it had been in the Seminole, Creek, Choctaw and Chickasaw nations, in order to accomplish identically the same results, in every particular, instead of purchasing from the Cherokees and then conveying to the Delawares, brought the contracting parties before it, at the seat of government, and there directed their hands in the making of a contract in conformity with the policy and purpose of the Government as expressed in the treaties of 1866. It is true that the *nominal* parties to the contract were both Indian tribes, and in that sense not within the rule laid down by Chief Justice Marshall in Worcester *vs.* Georgia, but that rule should be read in its broad spirit, too; and it should not be forgotten that the agreement of 1867 was made in Washington, between *representatives* of the two contracting tribes, one delegation being learned and one ignorant, and the United States, prompting and guiding the negotiation in order to carry out its treaties of 1866, was in no wise relieved of its full responsibity to the unlettered Delawares who were at the seat of Government doing its bidding.

It would indeed be monstrous if by this method of varying the strict terms of the treaty made with the Delawares on July 4, and without any fault or co-operation on their part, but simply in the performance of the will and direction of the United States, these people in their ignorance, simplicity, and good faith, by the mere gymnastics of phraseology, with the meaning of which they were entirely unfamiliar, are to be figured out of their birthright and stripped of the small vestige remaining of the splendid empire that once was theirs, and of which, by successive treaties, invariably obtained, to say the least, by misunderstanding, has dwindled to the diminutive patch of earth

purchased in the Cherokee Nation, and which they are now making a last determined struggle to protect.

The Cherokee agreement (sec. 25) provides that the roll of citizens of the Cherokee Nation shall be made as of September 1, 1902, *and the names of all persons then living* and entitled to enrollment on that date shall be placed on the said roll by the commission to the Five Civilized Tribes; that no person whose name does not appear upon the roll prepared, as herein provided, shall be entitled to in any manner participate in the distribution of the common property of the Cherokee tribe, and those whose names appear thereon shall participate in the manner set forth in this act (sec. 31). That—

> "All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe as their right may be determined by the judgment of the Court of Claims, or by the Supreme Court, if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation and now pending." . . . "Said commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April 8, 1867, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees" (sec. 23, Cherokee Allotment Act, approved July 1, 1902).

Surely it will not be contended that this act intended or proposed to limit the right vested in the registered Delawares by the agreement of 1867.

Whenever allotment took place the right of a registered Delaware to 160 acres in allotment and the right of the

registered Delawares, 985 in number, to the "aggregate amount of land equal to that which they had purchased" (157,600 acres), can no longer be denied. Each individual is entitled to an allotment certificate, and the Cherokee Nation can not, as one of the parties to the contract of 1867, retain the consideration paid by the registered Delawares, and refuse to deliver to the registered Delawares "an aggregate amount equal to that which they had purchased."

It is evident that but one quality of title was conveyed to the registered Delawares under the agreement of 1867. If, therefore, it was a life estate only to the registered Delawares who have died, it would be a life estate only to the registered Delawares who are living, and it would follow, necessarily, upon the deaths of the two hundred registered Delawares now living that their estate in the land would terminate. This can not be true, for there is no provision for reversion in the agreement of 1867, or anywhere else, and the very fact of allotment in severalty, which, by operation of law, dissolves the Cherokee Nation and makes it simply a co-ordinate part of the Federal Government, shows conclusively that an estate terminable with the life of the individual was not contemplated by the agreement of 1867.

Obviously the guarantee made the registered Delawares of an aggregate of 157,600 acres will not be complied with, or the obligation discharged, if only 32,800 acres are allotted to living registered Delawares. The only way to discharge this obligation is by allotting the 985 registered Delawares on the Delaware register of 1867 one hundred and sixty acres each.

The language of this court in directing the decree providing the "registered Delawares" should receive an allotment of 160 acres each is, in the opinion of the appellants, absolutely clear and unequivocal. There would be no reason to change the language except for the contention being set up that the term "registered Delawares" be interpreted so as to

limit the "registered Delawares" to those who were alive at some date to be fixed by those who would so construe the language of the court. To make such controversy impossible and in order to be at peace the Delawares wish that the language be made so explicit that neither party may any longer be in doubt with regard thereto.

We pray, therefore, that the language of the court in directing the decree be amended so as to insert after the words "registered Delawares" the words "whose names are enrolled upon the register of 1867," and after the word "improvements," the words, that is to say, "That 157,600 acres shall be allotted to said registered Delawares, whether living or dead, in separate allotments, to include their improvements, in the names of and to each of them, whose names appear upon said register of 1867, each to receive 160 acres, and that patents should issue accordingly; and that," so as to read:

> "Instead of dismissing the bill we think a decree should have been entered, finding the registered Delawares entitled to participate equally with Cherkee citizens of Cherokee blood in the allotment of lands of the Cherokee Nation, with the addition, that if there is not enough land to give to each citizen of the nation 160 acres, then the registered Delawares whose names are enrolled upon the register of 1867 shall be given that quantity, together with their improvements, that is to say, that 157,600 acres shall be allotted to said registered Delawares, whether living or dead, in separate allotments, to include their improvements, in the names of and to each of them, whose names appear upon said register of 1867, each to receive 160 acres, and that patents should issue accordingly; and that in all other respects the Cherokee citizens, whether of Delaware or Cherokee blood, should be given equal rights in the lands and funds of the Cherokee Nation. The decree dismissing the bill is so modified as to conform to the terms just stated, and as so modified it is affirmed."

The Delawares, in humbly submitting to the views of this honorable court, respectfully pray that it be remembered that they have placed upon these lands, at the instance and under the directing hand of the United States, more than a million of dollars of improvements in confident reliance that, upon the contingency of allotment, the guarantee of the aggregate amount of 157,600 acres to the registered Delawares would afford them protection.

Respectfully submitted.

WALTER S. LOGAN,
CHARLES M. DEMOND,
Attorneys for Appellant.

GEORGE S. CHASE.
Of Counsel.

22085

Office Supreme Court U.
FILED
JUN 1 1903
JAMES H. McKENNEY,
Clerk

IN THE SUPREME COURT OF THE UNTED STATES.

OCTOBER TERM, 1902.

The DELAWARE INDIANS, Residing in the Cherokee Nation and others, Petitioners, *Appellants*,

vs.

The CHEROKEE NATION, Defendants, *Appellees.*

No. 843. 240

APPEAL FROM THE COURT OF CLAIMS.

Motion to Advance.

This is an appeal to review a judgment of the Court of Claims, filed February 2, 1903, directing that the petition of the complainants be dismissed.

The petition was filed under the provisions of Section 25 of the Act of Congress of June 28, 1898, entitled "an Act for the protection of the people of the Indian Territory and for other purposes": (30 Stat. L., p. 490).

The case involves the construction of the agreement between the Delaware Indians and the Cherokee Nation of April 8, 1867, under which the Delaware Indians claim title to 157,600 acres of Cherokee land together with a large sum of money.

By the provisions of said Section 25, as also by Section 23 of the Act of Congress approved July 1, 1902, entitled "An

Act to provide for allotment of the lands of the Cherokee Nation, for the disposition of townsites therein and for other purposes" (32 Stats. L., part 1, p. 716), the Commission to the Five Civilized Tribes who are engaged in allotting the lands in the Indian Territory to the members of the several Indian tribes are required to segregate and reserve from allotment the 157,600 acres of land claimed by the Delaware Indians in this suit until final judgment is rendered herein by the Supreme Court of the United States, and by the last clause of said section it is provided that, "Said suit shall be advanced on the dockets of said Courts and determined at the earliest time practicable." The withholding of said lands from allotment hinders the work of the Commission to the Five Civilized Tribes charged with the onerous and responsible duties of allotting equally the lands of the Cherokee Nation to the various parties entitled thereto.

With the concurrence of the counsel for the appellants, I submit this motion to advance this case for hearing early in the next term.

WM. T. HUTCHINGS,
Attorney for Appellees.

JNO. J. HEMPHILL,
of Counsel.

FILE COPY.

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FILED
NOV 27 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1903.

No. 240.

THE DELAWARE INDIANS RESIDING IN THE CHEROKEE NATION AS A TRIBE AND INDIVIDUALLY, COMPLAINANTS, *Appellants,*

against

THE CHEROKEE NATION, RESPONDENT.

BRIEF FOR RESPONDENTS.

WILLIAM T. HUTCHINGS,
JOHN J. HEMPHILL,
Atty's for Respondents.

Supreme Court of the United States

OCTOBER TERM, 1903.

DELAWARE INDIANS,
vs.
CHEROKEE NATION.
No. 240.

STATEMENT.

After several years of more or less desultory effort, a treaty was finally executed April 8, 1867, between the Cherokee Nation and certain Delawares numbering 985, residing in Kansas, by which the latter agreed to pay $1.00 per acre for 157,600 acres of land belonging to the Cherokee Nation, and a certain sum in cash, the amount of which was to bear the same proportion to the funds of the Cherokee Nation held in trust by the United States that the number of said Delawares bore to the whole number of Cherokees. This was ascertained to be $121,824.28, and this, together with the $157,600 for the land, was transferred by the United States Government from the trust funds of the Delawares to the trust funds of the Cherokees, and the former, numbering 985, and known as the "Registered Delawares," removed in 1867 from the State of Kansas to the Country of the Cherokees in the Indian Territory, and have ever since resided there.

By an act approved June 28, 1898, (*30th Statutes, 495*) Congress empowered this Court, upon suit being brought,

to adjudicate and fully determine what right and interest these Delawares residing in the Cherokee Nation acquired in the lands and funds of said Nation under their contract and agreement with the Cherokee Nation, dated April 8, 1867.

This suit was commenced by the said Delaware Indians, within the time limited by said Act of Congress, to have their rights fixed and determined by the Court under said treaty of April 8, 1867.

The Court of Claims dismissed the petition and the petitioners appealed to this Court.

ARGUMENT.

The principal question to be adjudicated is that relating to the character and extent of the title acquired by the Delawares in the 157,600 acres of land purchased at the price of $1.00 per acre from the Cherokee Nation; being a part of the National Domain of the Cherokees.

The right of the Delawares to this land comes solely from the terms of the treaty made by them with the Cherokees in 1867, and the jurisdiction of this Court in this case is limited to the determination of the rights of the Delawares "under their contract and agreement with the Cherokee Nation, dated April 8, 1867".

The attempt to bring into the case any other treaties or agreements is only an effort to carry the Court outside of the authority conferred by Congress and to try to secure a judgment based upon something other than the agreement made by the parties in interest.

Looking to the terms of the agreement we submit that it is perfectly plain that what the Delawares acquired was the right for each "registered Delaware" to occupy, improve and use a certain quantity of the National Domain

of the Cherokee Nation, the aggregate extent of which was to be ascertained and measured by multiplying the number of registered Delawares by 160, thus fixing the total quantity of land at 157,600 acres. These lands, being 160 acres for each person, were to be occupied and used by the registered Delawares during the life of the respective occupants, and at the death of any registered Delaware the land so occupied and used by him, being during all this time a part of the National Domain of the Cherokees, would simply continue such, freed and released, however, from the life estate of the registered Delaware, the former occupant. Coupled with this life estate of the said registered Delawares was the further provision, that in any future allotment of the lands of the Cherokee Nation the registered Delawares should have at least 160 acres each, including their improvements. Children of Delawares born after the removal to the Cherokee Nation acquired no special rights of any kind in the land. They simply became citizens of the Cherokee Nation with the rights of native Cherokees, and none other.

It is important to note that the Delawares had no power or authority in themselves to take possession of or use the lands of the Cherokee Nation. They could only do so under and by virtue of the authority of the United States after agreement with the Cherokees, and the sole right and power of the United States to locate the Delawares or any other Indians on the domain of the Cherokee Nation is claimed to be derived from the Fifteenth Article of the treaty of July 19, 1866, between the United States and the Cherokees.

By this treaty the United States is limited to the right to "settle" friendly Indians in the Cherokee country, and the Indians so settling, if they preserve their tribal organization, are restricted to the right to have "a district of country set

off for their use." If they abandon their tribal relations they are at once incorporated into the Cherokee Nation on equal terms in every respect with native citizens.

Clearly there is no authority in this, the original source of power, to grant or for the Delawares to take a *fee simple title* to land such as they claimed in their argument in the Court below nor such title as in their revised and altered opinions they are claiming before this Court.

Examining the agreement between the Delawares and the Cherokees of April 8, 1867, under which title to the 157,600 acres is now claimed by the Delawares, we find :

1. That the preamble refers to the treaty between the United States and Cherokees by which friendly Indians might be "settled" on Cherokee lands.

2. It cites the refusal of the Cherokees to make *cession* of a part of their lands to the United States to *sell* to the Delawares, and that instead thereof terms had been provided by which friendly Indians might be "settled" on Cherokee lands, and that a full and free conference had been held looking to a "location" of the Delawares upon "Cherokee lands".

3. It then says the Cherokees agree to sell to the Delawares, for their "occupancy" a quantity of land specified.

4. It provides specifically that in case the Cherokee lands shall hereafter be alloted 160 acres shall be granted to each Registered Delaware, including his improvements.

Surely no such provisions as this last would have been necessary or proper in this treaty if the 160 acres occupied by each Delaware had been already conveyed to him by a fee-simple title, or other such title as to take it out from the body of the Cherokee lands subject to allotment. It was only the "Cherokee lands" that were to be allotted, and if

these 160-acre tracts had been conveyed away by indefeasible title they were no longer part of the National Domain; were not subject to allotment, and should not have been considered or embraced in any provision looking to allotment of Cherokee lands.

5. In the *habendum clause* the treaty provides for the continued ownership and occupancy of the land, but expressly limits this to the registered Delawares, and omits entirely all reference to their heirs and assigns which are wards absolutely necessary at common law to a title in fee-simple; and further provides that such ownership and occupancy shall be subject to the same conditions and restrictions as are by the laws of the Cherokee Nation imposed upon the citizens thereof. No one pretends that the ownership and occupancy of land in the Nation by a Native Cherokee carries a title in fee, or that it exceeds in extent the right simply to enclose, improve and use the lands, and to own and dispose of the improvements at will. But lest there should be some such claim of title to these lands set up as is being done in this case, and to set the matter entirely at rest, the Commissioners added to the agreement this *proviso*: "That nothing herein shall confer the right to alienate, convey or dispose of any such lands except in accordance with the constitution and laws of said Cherokee Nation." One of the essential features of a title in fee simple is the right and power to convey a similar title to any purchaser. But no one will pretend that under the Constitution and laws of the Cherokee Nation any provision is made, or authority given, for the holder of any land within the Cherokee Nation to convey to any one, whether a Cherokee or not, a title in fee to the land he occupies.

6. The agreement does not provide that the identical lands that were originally selected by the individual Dela-

wares shall be guaranteed to each Delaware, but only that the "aggregate amount of land herein provided for the Delawares, to include their improvements, according to the legal subdivision, when surveys are made (that is to say, 160 acres for each individual), shall be guaranteed each Delaware incorporated by these articles into the Cherokee Nation."

7. In guarding against interference with the ownership and occupancy of these lands the treaty expressly confines this protection to the "Delaware so registered." A most remarkable oversight and omission if it was intended by this treaty to convey such an estate in these lands as the petitioners set up here. If the descendants of these registered Delawares were to enjoy these lands in the same manner as their fathers, they would certainly have been provided for in this important clause of the treaty.

The construction the petitioners contend for completely sets at naught the plain language of the last paragraph of the Delawares–Cherokee Agreement, which provides that the children of these registered Delawares "shall, in all respects, be regarded as native Cherokees." Native Cherokees have no such estate in the public domain of the Nation as empowers them to reserve 160 acres each from allotment.

8. It is insisted by the petitioners that the Delawares bought all the title the Cherokees had to these lands.

As matter of fact, they bought whatever title is conveyed by the agreement of April 8, 1867, and nothing more, and while the character and extent of their rights cannot be greater than the title held by the Cherokees, the grantors, it is not necessarily the entire estate the Cherokees possessed in the lands, but only so much as the language of the treaty conveys.

The petitioners insist that the Delawares have preserved

their tribal existence, and that these lands were purchased and conveyed to the Delawares as a tribe, hoping thereby to furnish some basis, however shadowy, for the contention that the title which the Cherokees held as a tribe was transferred to the Delawares as a tribe.

The agreement between the Delawares and Cherokees shows that it was not intended that these Delawares should be received or be regarded by either party as a tribe.

They have not sustained a tribal government since their removal. They have a business committee to look after the trust funds held by the United States Government but they have and have not had any Chiefs or Council; they make no laws and have no courts, but on the contrary have always participated in the election of the Cherokee Chiefs and Council; have frequently held numerous offices in the Cherokee Nation; helped to make and are governed by Cherokee laws, and in every other way have conducted themselves as Native Cherokees.

The preamble to the Cherokee–Delaware agreement states as one of its objects the *consolidation* of the Delawares with the Cherokee Nation (Record, p. 2).

The body of the agreement provides that on the fulfilment by the Delawares of the stipulations therein provided all the members of the tribe registered as therein specified "shall become members of the Cherokee Nation."

No man can serve two masters; neither can a Delaware be a member of two nations.

Further the agreement contains a clause to this effect "nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without *his* consent." Not the consent of the tribe, showing thereby that the right or title to this land, whatever it is, went to the occupant as an individual member of the Cherokee tribe, who was to hold it

under " the same conditions and restrictions as are by the laws of the Cherokee Nation imposed upon native citizens thereof."

It thus appearing that the Delaware tribe was disbanded so far as these registered Delawares composed it; that they as individuals were consolidated with and became members of the Cherokee Nation, and that the ownership and occupancy of the lands purchased was lodged in the individual Delawares, and not in a tribe, and that they each held under the same conditions and restrictions as native Cherokees owned and occupied their holdings of land, it becomes plainly manifest that these 157,600 acres are to be allotted to the members of the Cherokee Nation in the same way as all the other public domain of the Nation, subject only to the condition that the improvements owned by any registered Delaware are to be included in any allotment to him and that he is to have at least 160 acres. In every other respect the Delawares and the 157,600 acres of land are to be treated and handled as all the other citizens and lands of the Cherokee Nation.

The petitioners endeavor to separate the agreement of April 8, 1867, into two entirely separate and distinct contracts; one for the purchase of land and the other for the acquisition of citizenship in the Cherokee Nation.

This cannot be done without wholly disregarding the purpose of the agreement and altering its terms.

It is all embraced in one paper and was prepared and executed at the same time and by the same parties after a full and free conference. Its declared purpose is to locate the Delawares on Cherokee lands and consolidate them with the Cherokee Nation. It was not intended to sell lands which should become the indefeasible property of another tribe of Indians to reside permanently in the midst of the Cherokees and then to grant these same persons, for a

consideration, the rights of citizens in the Cherokee Nation in addition to rights in the Delaware tribe.

The terms of the agreement provide for the sale of the land "for and in consideration of certain payments and the fulfillment of certain conditions hereinafter mentioned." There was certainly but one payment for the land. If then the purchase of the land was entirely separate from the citizenship rights why is reference made to "*payments* and *conditions*" (Rec., p. 4)?

Again near the close of the agreement it is set out that "on the fulfillment by the Delawares of the foregoing stipulations" they are to become members of the Cherokee Nation. The stipulations referred to mean those relating to the land and to citizenship, so that the two things are bound closely together and constitute one agreement.

We think, therefore, that the express terms of the Agreement between the Delawares and the Cherokee Nation, under which the former moved into the Cherokee country, and now occupy a portion of its lands, expressly limits the right of the Delawares in the 160 acre lots to the occupancy and use by the Registered Delawares who selected and occupied them with the same conditions and limitations that attach to the occupancy and holding of land by a Native Cherokee.

If the terms of the Agreement were not so plain the conclusion is unavoidable that the right of the Delawares in the 157,600 acres was limited to the life of the Registered Delawares and to the same kind of occupancy that native Cherokees enjoyed, for the reason that the Cherokees themselves did not possess a title in fee simple, and consequently could not convey such a title to the Delawares.

In addition to the plain terms of the Agreement it has been decided by the Supreme Court of the United States what character of title the Delawares took.

"The individual Delawares took their homes in, and remaining in the Cherokee reservation, and as lands to be considered in any subsequent allotment in severalty among the members of the Cherokee Nation."

"Neither should too much weight be given to the fact that the Delawares were to pay for their homes at the rate of a dollar per acre, for by purchase they acquired no title in fee simple."

"So long as each individual Indian, whether Delaware or Cherokee, had his particular tract as *occupancy* for a home," it was not unnatural or unequal that the vast body of the lands not specifically appropriated should be treated as the common property of the Nation, to which all members, whether by birth or adoption, should be entitled to equal rights and privileges.

Journeycake *vs.* U. S., 155 U. S., 213, 214, 215.

The fee of lands in the Cherokee Nation is in the Nation.

Whatever right any citizen has to occupy any particular parcel of the public lands of the Nation, he must acquire under and in pursuance of the laws of the Nation, and not in defiance of them. Bell *vs.* R. R. Co., 63 Fed. Rep., 417–420.

It will hardly be contended that the Cherokee Nation conveyed to the Delaware Indians in the Cherokee Nation a greater or better title than the Cherokees themselves possessed. In fact, the testimony shows that from beginning of the negotiations to the end, the Cherokees were entirely averse to conveying to the Delawares a separate and distinct portion of the National Domain, and it does not stand to reason that they did really intend to convey rights or title to the lands which they themselves did not enjoy. The petitioners argue that the United States, having approved the agree-

ment between these two tribes of Indians, thereby conveyed its title in these lands to the Delawares. It is an extraordinary proposition to say that a third party who approves of an agreement between two others, thereby surrenders his title to thousands of acres of property without the use of the ordinary terms by which landed property is conveyed in this country.

In addition to that, the President of the United States has no power to convey away the public lands of the United States, or any other property of the Government except by express authority of an Act of Congress. No such act authorizing conveyance of the title of the United States in the Cherokee lands has been cited. The public lands of the United States are transferred by patent from the General Land Office at Washington, and if any other conveyance is relied upon, the Act of Congress must be shown.

The petitioners have undertaken by oral testimony to shade off the force and meaning of the words used in the treaty and to substitute therefor the alleged understanding of one of the parties to the agreement of April 8, 1867, so as to take by that agreement a fee-simple title to the land in dispute.

They examined seventeen witnesses out of 985 Delawares and 13,000 Cherokees. Only ten of these undertake to testify as to the construction of the agreement contended for by the Delawares, and they give hearsay evidence by undertaking to relate conversations they had heard other Delaware Indians have thirty-five years ago. The petitioners in another part of the argument, refer to the illiterate condition of the Delawares and their commissioners who signed the agreement, but seem to forget that they are thus materially weakening their own testimony; for if their leading men were not able to comprehend the meaning of a paper so clear and plain as this, it must be apparent that the less impor-

tant members of the tribe are wholly incompetent to guide this Court in the construction of this agreement by detailing conversations that occurred more than a generation ago. The Court is certainly entitled to evidence of a better character than this before it can be expected to convert a life occupancy of land as set out in the solemn compact of the parties, into a fee-simple title after the lapse of thirty-five years.

These conversations relate solely to the understanding of the Delawares, and even if accurate, cannot bind the Cherokee or settle their rights. The agreement was discussed thoroughly and frequently while in process of preparation in the presence of the Commissioner of Indian Affairs, was executed in Washington in open day, and was not the outcome of an over-reaching contract by the Cherokees in some distant place where the Delawares were without counsel. One witness only—S. H. Benge—undertakes to testify as to the views or understanding of the Cherokees, he only gives his individual opinion, and he finally voted for the ratification of the agreement by the Cheroke Senate. The views of the other 13,000 Cherokees was, we may assume, in exact accord with the terms of the agreement as no proof is offered to the contrary.

All of the foregoing testimony however was objected to by the respondent on the ground that it was incompetent to vary the terms of the written agreement.

Complainants have realized the importance of varying the terms of this agreement or at least of putting upon it a construction that its plain terms will not admit of, for without such variation they could not possibly have any standing in this Court.

A similiar instance came before the Supreme Court of the United States in case of the Eastern Band of Cherokee Indians *vs.* The United States, 117 U. S., 288.

In fact the character of testimony sought to be introduced to change the treaty was exactly the same as in this case and the Supreme Court in passing upon this class of evidence makes this statement:

> "While the Treaty of 1846 was under negotiation, one William H. Thomas appeared in Washington as representative of Cherokees in North Carolina and urged a recognition of their demands for the per capita money and the removal and subsistence money under articles 8 and 12 of the Treaty of 1835. He had obtained a statement from one of the commissioners who negotiated that treaty on the part of the United States, from several respectable persons who were privy to the negotiations, and from some of the Cherokees who signed the treaty, as to the meaning which should be given to certain terms used in it; and we are referred to these documents as though they should have some influence upon the construction of those terms. But it is too plain for controversy that they cannot be used to control the language of the Treaty or guide in its construction."

Of course as a general proposition there must be some ambiguity or some obscurity about the language of any instrument to warrant the introduction of such testimony as is here sought to be adduced, and if there is no such in this case the introduction of it could not be warranted from any state of facts.

This Treaty has been before this Court and the Supreme Court of the United States before and the jurisdictional acts referring the matter to the court now and then are very much the same and quite as full in each case, as will be seen by the following extracts from the acts.

JURISDICTIONAL ACT.

> "An act to refer to the court of claims certain claims of the Shawnee and Delaware Indians, and the freedmen of the Cherokee Nation, and for other purposes.

Be it enacted, etc.—That full jurisdiction is hereby conferred upon the Court of Claims, subject to an appeal to the Supreme Court of the United States as in other cases, to hear and determine what are the *just rights* in law, or in equity of the Shawnee and Delaware Indians, who are settled and incorporated into the Cherokee Nation, Indian Territory, east of ninety-six degrees west longitude, under the provisions of article fifteen of the Treaty of July nineteenth, eighteen hundred and sixty-six make by and between the United States and the Cherokee Nation and articles of agreement made by and between the Cherokee Nation and the Shawnee Indians June seventh, eighteen hundred and sixty-nine, approved by the President June ninth, eighteen hundred and sixty-nine, and articles of agreement made with the Delaware Indians, April eighth, eighteen hundred and sixty-seven; and also of the Cherokee Freedmen, who are settled and located in the Cherokee Nation under the provisions and stipulations of article nine of the aforesaid treaty of eighteen hundred and sixty-six in respect to the subject-matter herein provided for."

See Act set out in full in Journeycake *vs.* Cherokee Nation, 28 Ct. Claims, 282.

Section 25 of the Curtis Act, 30th United States Statutes at Large, p. 495, authorizing this suit, is as follows:

"That before any allotment shall be made of lands in the Cherokee Nation, there shall be segregated therefrom by the commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand, six hundred acres purchased by the Delaware Tribe of Indians from the Cherokee Nation, under agreement of April eighth, eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee Nation under said agreement. That the Delaware Indians residing in the Cherokee Nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty

> days after the passage of this act against the Cherokee Nation, for the purpose of determining *the rights* of said Delaware Indians in and to the lands and funds of said Nation under their contract and agreement with the Creek Nation dated April eighth, eighteen hundred and sixty-seven; or the Cherokee Nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States."

When the Court was considering the first Delaware case under the first paragraph quoted, the Cherokees attempted to place several constructions on the agreement considered in this case different from the express language therein contained; and the court in Cherokee Nation *vs.* Journeycake, 155 U. S., 212, makes the following comment:

> "Commenting generally upon this line of argument it is rather an endeavor to induce the Court to reconstruct the contract and frame one more in accord with what, from the present standpoint, would seem to have been equitable, than to interpret the contract which the parties made in accordance with the plain import of the language which they used."

Another point which complainants make in their proof along this line, page 646, is that such proofs were introduced to place the Court as nearly as possible in the position of the contracting parties—that the Court might look at the question from the view point of the Indian at the time the agreement was made.

The same proposition was urged upon the Court in the Journeycake case; and the Court there agreed that it was necessary for them to place themselves back in the circumstances of the parties at the time with their surroundings and their expectations; but stated that it was not necessary

to have any external evidence to do so when the language of the treaty and the contract was sufficiently plain. We take the following from that opinion:

> "In that light we see nothing in the matters suggested by counsel sufficient to overthrow the plain import of the language used in the agreement and must conclude that by such agreement the Delawares became members thereof, and, as such, entitled equally with the native Cherokees to all their rights in the reservation and outlet."

Petitioners argue that there was a fixed ratio as to numbers between the Cherokees and Delawares made by this agreement and that thereby the Cherokees surrendered their right and power to admit other persons to membership in the Cherokee Nation. It is safe to say that the commissioners of both the Cherokees and Delawares would be greatly astounded to know that they had made such an iron-clad agreement which was to be perpetual when the question was not discussed and nowhere appears in the writing agreed to and signed by them.

Every nation has inherently the power to admit new citizens as well as the power to exclude them, in accordance with the terms of its Constitution. And "by treaties with the Cherokees, the United States have recognized them as a distinct political community, so far independent as to justify and require negotiations with them in that character." (Cherokee Trust Fund Case, 117 U. S., p. 285.)

It is an established principle of law that the Legislature will not be held to have surrendered its right and power to legislate on all proper subjects except by words too plain to be misunderstood. It is contended here that the Legislative Branch of the Cherokee Nation has lost its power to admit outside persons to citizenship not by any act of its

own, but by an agreement made by certain commissioners, in which the subject is not mentioned, and over which the commissioners had no power or authority whatever. The Petitioners' argument is based on the statement that by the agreement the benefits of Cherokee citizenship are limited to the actual number of the registered Delawares, and that therefore the Cherokees are also limited to their original number. But as a matter of fact, the benefits are not restricted to the registered Delawares, for all Delawares of every description, registered and native born, within the Cherokee country, are entitled to the same rights and benefits, and if the number of Delawares has been definitely fixed by the agreement, and the number of the Cherokees has not been, the inference would naturally be that no limit was intended as to the Cherokees, because the inclusion of one is necessarily the exclusion of the other.

The petitioners further endeavor to sustain their construction of the agreement between the Cherokees and Delawares by referring to the treaty between the United States and the Delawares, and that between the Cherokees and the United States, both dated in 1866, and insist that these are a part of the agreement between the two tribes of Indians. They seem to have overlooked the fact that the treaty with the Delawares is only mentioned in the agreement between the Cherokees and Delawares so as to exclude it entirely from the agreement. The treaty between the United States and Delawares contemplated a future purchase by the United States of a portion of the Cherokee domain, which the Government was to sell to the Delawares at a fixed price, and the agreement between the Cherokees and Delawares expressly says: "And whereas no such cession of land was ever made by the Cherokees to the United States, but in lieu thereof terms were provided as hereinbefore mentioned, under which friendly Indians might be settled upon their

lands." It is clear, therefore, that in construing this agreement, no light can be thrown upon it by referring to the Deleware Treaty.

The point is raised by the petitioners that the same price was paid for lands which were purchased for aged Delawares as was paid for lands purchased for the younger members, and the inference is drawn that there must have been more than a life estate conveyed. There might be something in this argument if this land had been purchased by individuals, and each had paid from his own funds the price fixed. It is of no force, however, when it is remembered that the lands were paid for from the funds of the Delaware tribe, which belonged in equal proportion to the aged and younger members alike. And further, that when the life estate of the Registered Delaware ended, his interest in the property purchased was not wholly lost, as in the case of an ordinary life estate of an individual, for while the heirs at law of the Registered Delaware did not become the owner of the property occupied by his ancestor, the property did still remain a portion of the National Domain freed from any claim upon the part of any individual, and as such National Domain the heirs of the Registered Delaware was interested in it as one of the members of the Cherokee Nation.

Further it is claimed that the price of $1.00 per acre paid by the Delawares indicated that they purchased more than the right of occupancy during their lives, and reference is made by the petitioners to large tracts of Indian lands sold to the United States for a less sum per acre. It would be most unusual to convert the word "occupancy" in a paper writing into a fee-simple title simply because the price paid for the land in question was larger than had been paid for other lands. Outside of that, however, it is clear that this was not an unreasonable price, when compared with the price paid for other Indian lands, for two reasons: (1) In

the other cases cited, millions of acres of land were conveyed, taking the good with the bad, and how much bad land there was we do not know; (2) in the pending case the Delawares had the right of personal, individual selection, embracing the power to choose the best lands out of millions of acres in tracts varying from 160 to 1,000 acres, and located not in one body, but wherever their interests or judgment dictated, with the right of immediate entry and occupancy, and with the further right that they and their descendants became members of a great tribe of their own people, and interested with them in all the great Domain of the Cherokee Nation.

It is further contended that the Delawares supposed that the treaty of 1866 made by them was in harmony with their previous treaties, and if they make one kind of treaty at one time for the accomplishment of a certain result, they imagine that the same kind of treaty is necessary a second time. It is scarcely necessary to argue this question upon what the Delawares either supposed or imagined.

It is not clear, however, that the Delawares held their lands in Kansas by any better or more extended title than that which they acquired from the Cherokees. Mr. William Adams, a witness for the petitioners, states: "The Delawares had their own lands in Kansas. In the latter part of their stay in Kansas before they moved to the Cherokee Nation, it was their habit for each one to hold his own land." Certainly that does not show a fee-simple title.

It is claimed also that the right of the Delawares is enlarged and extended beyond the words of the Agreement, because of the fact that $1.00 per acre was paid for 160 acres for each person, according to the roll of 985 Delawares, notwithstanding that some had in the meantime died. No proof is made as to the number who died between the date of the Agreement and the actual settlement of the Dela-

wares in the Cherokee country, and presumably it was a very small number, or that the births did not equal or exceed the deaths. Some did die prior to the payment for the land in May, 1869, but that should not affect the question, for the reason that the Delawares had been from 1867 in the occupancy and enjoyment of the land they purchased, and it was only just that they should pay for it.

In addition it may be said that when the Government is dealing with a large number of persons there must be some fixed number upon which calculation shall be based, for deaths may occur at any moment, and it is practically impossible to be making a new register every day, and the agreement having expressly provided for payments upon a basis of 985 Delawares, could not be altered by reason of the changes occurring from natural causes. This is of peculiar force when applied to the Indians, who usually require years to reach an agreement, which could be arranged between white men within a few days.

The claim is made that the Delawares are entitled to a division of the trust funds held by the United States upon a basis excluding all alleged illegally admitted Cherokee citizens, and further, that certain funds alleged to have been misappropriated or stolen from the public treasury of the Cherokee Nation, should be restored, and if this is impracticable, that the decree of the Court should be so framed as not in any way to charge these funds or any portion of them to the Delawares, and that their shares should not be diminished by this defalcation. The Delawares place themselves in an attitude of claiming all the rights of Cherokees, and in fact a great deal more, yet wish to be free from all responsibility growing out of a mismanagement of the funds of the nation to which they belong. The witnesses for the petitioners agree in their statement that the Delawares had participated in

all elections of members of the council and all other officers of the Government, have assumed all rights of citizenship to the fullest extent permitted in the Cherokee Nation, and yet they now decline to bear any of the losses, or to be responsible for any of the failures of the agents whom they have selected. The mere statement of the facts of the case is sufficient to answer the claim set up by the petitioners in this respect. No question is made by the defendant that certain illegal transactions have occurred in connection with the Cherokee national funds, but no member of the nation can assert that he is any less responsible for it than any other. And every member of the nation must bear the same measure of responsibility and the same loss as every other member.

In October, 1897, the Indian Office called upon the law office of the Interior Department "for an opinion as to the quantity of land which the Delaware Indians are entitled to receive per capita in allotment in the Cherokee Nation." At the close of a lengthy and able opinion, after reviewing the former Delaware case decided by this Court and the Supreme Court, the opinion closed with the following extract, which we think states the only conclusion which any fair-minded person can arrive at:

> "In view of these declarations by the Supreme Court as to the meaning and effect of the agreement between these people, the contention that the registered Delawares are entitled to 160 acres each by right of purchase, and also to an allotment in the remaining lands cannot be sustained. As said by the Court of Claims the agreement was something more than a contract for the sale and purchase of lands. It was in fact a compact for the consolidation of two separate and distinct bodies politic by which they become united in one. By its terms the Delawares, or that portion of the tribe which saw fit to accept the agreement, were

merged in and became a part of the body politic of the Cherokee Nation. It was the evident intention and effect of the compact to make the adopted members equal in all respects with the original members.

"After a careful consideration I am of the opinion and so advise you, that the Cherokee citizens of Delaware blood are entitled to the same quantity of land in allotment as are those of Cherokee blood, with the proviso that if it be found that there is not sufficient land to give each member of the Nation 160 acres in allotment, then those Delawares who moved into the Cherokee country known as registered Delawares, shall first be given the full quantity of 160 acres, the remainder of the land to be equally divided among the remaining members of the Nation."

Respectfully submitted,

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Attorney of Record.

JOHN J. HEMPHILL,

Of Counsel.

Supreme Court of the United States.

No. 240.—October Term, 1903.

The Delaware Indians, residing in the Cherokee Nation, et al., Appellants, vs. The Cherokee Nation. } Appeal from the Court of Claims.

[February 23, 1904.]

Mr. Justice Day delivered the opinion of the Court.

On June 28, 1898, the Congress of the United States passed an act entitled "An act for the protection of the people of the Indian Territory and other purposes." (30 Stat. 495.) By the twenty-fifth section of the act it is provided:

"That before any allotment shall be made of lands in the Cherokee Nation, there shall be segregated therefrom by the commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand, six hundred acres purchased by the Delaware tribe of Indians from the Cherokee Nation, under agreement of April eighth-eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee Nation under said agreement. That the Delaware Indians residing in the Cherokee Nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee Nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee Nation dated April eighth, eighteen hundred and sixty-seven; or the Cherokee Nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States."

Under this section the present suit was prosecuted in the Court of Claims by the Delaware Indians residing in the Cherokee Nation, as a tribe and individually, joined by certain others suing for the surviving registered Delawares, their children, descendants and personal representatives, against the Cherokee Nation, for the purpose of determining the right of the Delaware Indians "in and to the lands and funds of said nation" under the contract and agreement with the Cherokee Nation dated April 8, 1867. This contract sets forth:

"Now, therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

"The Cherokees, parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions hereinafter men-

tioned, agree to sell to the Delawares for their occupancy, a quantity of land east of the line of the 96° west longitude, in the aggregate equal to one hundred and sixty acres for each individual of the Delaware tribe, who has been enrolled upon a certain register made February 18, 1867, by the Delaware agent, and on file in the Office of Indian Affairs, being the list of Delawares who elect to remove to the 'Indian country,' to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after signing of this agreement, desire to be added thereto, and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line 96° not already selected and in possession of other parties, and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares to include their improvements according to the legal subdivisions when surveys are made (that is to say, one hundred and sixty acres for each individual), shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation, nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee Nation imposed upon native citizens thereof.

"Provided that nothing herein shall confer the right to alienate, convey or dispose of any such lands except in accordance with the constitution and laws of said Cherokee Nation.

"And the said Delawares, parties of the second part, agree that there shall be paid to the saidCherokees from the Delaware funds now held or hereafter received by the United States, a sum of money equal to one dollar per acre for the whole amount of one hundred and sixty acres of land for every individual Delaware who has already been registered upon the aforesaid list, made February 18, 1867, with the additions thereto heretofore provided for.

"And the Secretary of the Interior is authorized, and requested to sell any United States stocks belonging to the Delawares to procure funds necessary to pay for said lands; but in case he shall not feel authorized, under existing treaties, to sell such bonds belonging to the Delawares, it is agreed that he may transfer such United States bonds to the Cherokee Nation, at their market value, at the date of such transfer.

"And the said Delawares further agree that there shall be paid from their funds now or hereafter to come into possession of the United States a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned and removing to the Indian country sustains to the whole number of Cherokees residing in the Cherokee Nation. And for the purpose of ascertaining such relative numbers the registers of the Delawares herein referred to, with such additions as may be made within one month from the signing of this agreement, shall be the basis of calculation as to the Delawares, and an accurate census of the Cherokees residing in the Cherokee Nation shall be taken under the laws of that nation within four months, and properly certified copies thereof filed in the Office of Indian Affairs, which shall be the basis of calculation as to the Cherokees.

"And that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is $678,000.

"And the Delawares further agree that in calculating the total amount of said national fund there shall be added to the said sum of $678,000 the sum of $1,000,000, being the estimated value of the Cherokee neutral lands in Kansas, thus making the whole Cherokee national fund $1,678,000; and this last mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund.

"Provided, that as the $678,000 of funds now on hand belonging to the Cherokees is chiefly composed of stocks of different values, the Secretary of the Interior may transfer from the Delawares to the Cherokees a proper proportion of the stocks now owned by the Delawares of like grade and value, which transfer shall be in part of the *pro rata* contribution herein provided for by the Delawares to the funds of the Cherokee Nation; but the balance of the *pro rata* contribution by the Delawares to said fund shall be in cash or United States bonds, at their market value.

"All cash, and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under the agreement, shall be invested and applied in accordance with the twenty-third article of the treaty with the Cherokees of August 11, 1866.

"On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered as above provided, shall become members of the Cherokee Nation, with the same rights and immunities, and the same participation (and no other) in the national funds, as native Cherokees, save as hereinbefore provided.

"And the children hereinafter born of such Delawares so incorporated into the Cherokee Nation shall, in all respects, be regarded as native Cherokees."

The treaties which led up to this agreement are referred to in the contract and were ratified in 1866. The fifteenth article of the treaty of August 11, 1866 between the United States and the Cherokee Nation provided:

"Article XV. The United States may settle any civilized Indians, friendly with the Cherokee and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96 degrees, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any such tribe or band of Indiaas settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect with native citizens. And should any such tribe, thus settling in said country, decide to preserve their tribal organizations, and to maintain their tribal laws, customs and usages, not inconsistent with the constitution and laws of the Cherokee

Nation, they shall have a district of country set off for their use by metes and bounds equal to one hundred and sixty acres, if they should so decide, for each man, woman and child of said tribe, and shall pay for the same into the national fund such price as may be agreed on by them and the Cherokee Nation, subject to the approval of the President of the United States, and in cases of disagreement the price to be fixed by the President.

"And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country, and thence afterwards they shall enjoy all the rights of native Cherokees. But no Indians who have no tribal organizations, or shall determine to abandon their tribal organization, shall be permitted to settle east of the ninety-sixth degree of longitude without the consent of the Cherokee national council, or of a delegation duly appointed by it, being first obtained. And no Indians who have and determine to preserve their tribal organizations shall be permitted to settle, as herein provided, east of the ninety-sixth degree of longitude without such consent being first obtained, unless the President of the United States, after a full hearing of the objections offered by said council or delegation to such settlement, shall determine that the objections are insufficient, in which case he may authorize the settlement of such tribe east of the ninety-sixth degree of longitude."

Article IV of the Delaware treaty, referred to in the agreement of April 8, 1867, is in the following terms:

"Article IV. The United States agree to sell to the said Delaware Indians a tract of land ceded to the government by the Choctaws and Chickasaws, the Creeks, or the Seminoles, or which may be ceded by the Cherokees in the Indian country, to be selected by the Delawares in one body in as compact a form as practicable, so as to contain timber, water and agricultural lands, to contain in the aggregate, if the said Delaware Indians shall so desire, a quantity equal to one hundred and sixty (160) acres for each man, woman and child who shall remove to said country, at the price per acre paid by the United States for the said lands, to be paid for by the Delawares out of the proceeds of sales of land in Kansas, heretofore provided for. The said tract of country shall be set off with clearly and permanently marked boundaries by the United States; and also surveyed as public lands are surveyed, when the Delaware council shall so request, when the same may, in whole or in part, be allotted by said council to each member of said tribe residing in said country, said allotment being subject to the approval of the Secretary of the Interior."

At the time of moving upon these lands there were 985 registered Delawares, of whom 212 survived at the beginning of this suit, together with children and descendants of those deceased.

The agreement of April 8, 1867, was before this court in the case of the *Cherokee Nation* v. *Journeycake*, (155 U. S. 196.) While the precise questions involved in the present controversy were not then before the

court, the rights adjudicated turned upon the construction of the agreement of April 8, 1867, and its nature and the history of the events which led up to its execution by the parties thereto were the subjects of consideration and determination by this court. In that case it was held that under the agreement the registered Delawares were incorporated into the Cherokee Nation, and as members and citizens thereof were entitled to participate in the proceeds of the sale of a portion of the Cherokee lands upon equal terms with native Cherokee citizens. The claim is made that the contract of 1867 secured to the registered Delawares individually, or to the Delawares as a tribe, the 157,000 acres of land which were to be set off to them east of the ninety-sixth meridian. This agreement was made and entered into in pursuance of the treaty stipulations hereinbefore referred to. And while it may be regarded as arising from these preliminary treaties with the United States, the care with which it was made and the evident intention of the parties to deal at arm's length with full knowledge of their respective rights and aims, leaves little to be gained from these preliminary treaties as an aid to construction, except as a means of placing ourselves in the situation of the parties when the contract was signed and delivered. It is the claim in behalf of the Delawares that if not technically an estate in fee, one was conveyed permanent in its character and transmissible by descent to the children and kin of the registered Delawares, or at least it was a holding which should endure so long as the Delawares and their descendants continued to exist as a tribe.

It was held in the Journeycake case, to be the purpose of this agreement to incorporate the registered Delawares into the Cherokee Nation, with full participation in the political and property rights of citizens of that nation. As a part of the general agreement, provision is made for rights in certain lands as a home for the Delawares who are to remove from their Kansas lands to the Indian Territory. These lands are to pass to registered Delawares and they are to have the privilege of selecting them from unoccupied lands east of the line 96 degrees west longitude. This right is conferred not upon the Delaware Nation, but upon certain registered Delawares who are to be incorporated into the Cherokee Nation. To such is given a quantity of land equal in the aggregate to 160 acres for each registered Delaware, whose name is required to be entered upon a register to be filed in the Office of Indian Affairs, the lands thus conveyed being distinctly declared to be sold to the Delawares "for their occupancy." This limitation, in what may be characterized as the *habendum* clause of the conveyance, does not import a holding beyond the life of the first taker, and is entirely inconsistent with the idea of permanency of tenure in the estate conveyed unless there is something in the nature of Indian titles to

lands or in the terms of the instrument which requires an enlargement of an estate for occupancy into one the equivalent of a fee. It is argued that an estate of occupancy is the ordinary estate of the Indian tribes and embraces all the title held by them, the fee remaining in the United States. There is nothing to prevent the United States if it chooses to convey a fee to the Indian tribes from so doing.

Indeed, in the sixteenth clause of the treaty with the Cherokee Nation of August, 1866, it is provided that a fee may be conveyed to friendly Indians settled west of the ninety-sixth meridian. But for the present purpose, it is unnecessary to speculate as to the nature of the Indian title derived from the United States by treaty. The nature and extent of the Cherokee title has been settled by previous adjudications of this court. In the case of *Cherokee Trust Funds*, (117 U. S. 288, 308,) it was held that the lands of the Cherokee Nation belonged to them as a political body, and not to its individual members, and speaking of the rights of individual Cherokees it was said: "He had a right to use parcels of the lands thus held by the nation, subject to such rules as its governing authority might prescribe."

The lands of the Cherokee Nation are not held in individual ownership, but are public lands, though held for the equal benefit of all the members. (*Stephens* v. *Cherokee Nation*, 174 U. S. 445–488; *Cherokee Nation* v. *Hitchcock*, 187 U. S. 295.) Under the patent issued to the Cherokees for their lands, whatever title conveyed was to the Cherokees as a nation, and no title was vested in severalty in any of the Cherokees. (*Cherokee Nation* v. *Journeycake*, 155 U. S. 196–207.)

In an agreement incorporating certain Delawares into the Cherokee Nation it is important to consider under what terms and conditions its citizens held and used the lands occupied by them. We are here dealing with the extent of the title conveyed as between Indian tribes, and the question is what did the Cherokees convey in the agreement to the Delawares who came within the terms of the compact and who were to be incorporated into the Cherokee Nation. In addition to the limitations expressed in the conveyance, "for occupancy," we find other terms of the instrument inconsistent with the grant of a perpetual estate. It is provided that in case the Cherokee lands shall hereafter be allotted among the members of said nation, the aggregate amount of land provided for the Delawares to include their improvements according to the legal subdivisions when surveys are made (that is to say, one hundred and sixty acres for each individual), shall be guaranteed to each Delaware incorporated by the articles into the Cherokee Nation. The lands which are for occupancy of the Delawares are described as "Cherokee lands," and a provision made which secures 160 acres to include their improve-

ments to each registered Delaware in case of allotment. If the full title was intended to be transferred to the Delawares, either as a tribe or individually, this stipulation to secure the rights of the Delawares in the contingency named was entirely superfluous. Further, the contract reads: "Nor shall the ownership and occupancy of said lands by any Delawares so registered be interfered with in any manner whatsoever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee Nation imposed upon the native citizens thereof. Provided, that nothing herein shall confer the right to alienate, convey or dispose of any such land except in accordance with the constitution and laws of said Cherokee Nation."

These stipulations, wholly inconsistent with the full title of the Delawares to the lands in question, must be read in the light of the constitution and laws of the Cherokee Nation as to the holding of land by Cherokee citizens.

The provisions of the Cherokee constitution and the statutes passed in pursuance thereof pertinent to the subject are collected in the opinion of the Court of Claims in the Journeycake case, and are cited in a note to the opinion of this Court in the same case. (155 U. S. 207.) From them it is apparent that lands to be held upon the same terms as the Cherokees hold their lands cannot be alienated by those who occupy and hold them, but the ownership is lodged in the Cherokee Nation. The individual has no right to alienate or lease the lands. The nation grants and restricts the right of occupancy. The title to the lands is vested in the government, to be held and controlled in such wise as to promote the general welfare. Under these restrictions and conditions the registered Delawares held the lands set apart for their occupancy. In the laws of the Cherokee Nation we find that the use of the terms "for use and occupancy" was not an unfamiliar form of expression in describing the character and limitation upon the right of private ownership. Thus in the act relating to the public domain, and reserving tracts of lands one mile square along railroads at stations, and providing for the sale of town lots, it is provided that the purchaser shall acquire no other rights than those of use and occupancy. If the lands in question were granted in perpetuity to the Delawares, we have the awarding of an estate of this character carved out of lands recognized in the agreement as continuing to be Cherokee lands, belonging to the nation which expressly limits the conveyance of its lands to its own citizens for use and occupancy only. Again, if it was intended to provide for the children or heirs of the first takers—the registered Delawares—we should expect to find some words in the agreement competent for that purpose, conceding that the technical terms of the common law to create an estate in fee need not have been used. As to the

children of the registered Delawares we find this specific provision: "And the children hereafter born of such Delawares so incorporated into the Cherokee Nation shall in all respects be regarded as native Cherokees." This provision is utterly inconsistent with the grant of an estate in the lands to survive the "occupancy" of the registered Delawares. Such children are to have the rights of native Cherokees and no more. Their parents were incorporated into the Cherokee Nation with certain specific rights; the children were to stand upon an equality with their adopted brethren of the Cherokee blood.

The importance of the issue now distinctly made as to the title to these lands has led us to give renewed examination to the question of the extent and character of the interest conveyed to the Delawares, in the lands in controversy. In the Journeycake case, while it is true that the precise question was not the same as is now presented, full consideration to all the terms of this contract was given in order to determine the interests of the Delawares in the Cherokee lands sold, and the court, speaking by Mr. Justice Brewer, used this pertinent language, the force of which has not been diminished in the light of subsequent examination aided by the arguments and briefs of counsel now presented: "So far as the provision in the agreement for the purchase of homes is concerned, it will be perceived that no absolute title to these homes was granted. We may take notice of the fact that the Cherokees in their long occupation of this reservation had generally secured homes for themselves; that the laws of the Cherokee Nation provided for the appropriation by the several Cherokees of lands for personal occupation, and that this purchase by the Delawares was with the view of securing to the individual Delawares the like homes; that the lands thus purchased and paid for still remained a part of the Cherokee reservation. And as a further consideration for the payment of this sum for the purchase of homes the Delawares were guaranteed not merely the continued occupancy thereof, but also that in case of a subsequent allotment in severalty of the entire body of lands among the members of the Cherokee Nation, they should receive an aggregate amount equal to that which they had purchased, and such a distribution as would secure to them the homes upon which they had settled, together with their improvements. So that if, when the allotment was made, there was for any reason not land enough to secure to each member of the Cherokees 160 acres, the Delawares were to have at least that amount, and the deficiency would have to be borne by the native Cherokees *pro rata*. In other words, there was no purchase of a distinct body of lands, as in the case of the settlement of other tribes as tribes within the limits of the Cherokee reservation. The individual Delawares took their homes in and remaining in the Cherokee reservation, and as lands to be considered in any subsequent allotment in severalty among the members of the Cherokee Nation. All this was in the line of the expressed thought of a consolidation of these Delawares with and the absorption of them into the Cherokee Nation as individual members thereof. If it be said that all of the Delaware trust funds were not turned into the national

fund it will be remembered that there was no impropriety in the reservation of a part thereof in order to enable the Delawares to make such improvements as they might desire on the tracts that they selected for homes, and also that there was no certainty that all the members of the Delaware tribe would elect to remove to the Cherokee country, and that those who remained in Kansas were entitled to their share in the Delaware national funds."

If such be the true construction of the agreement, it is nevertheless insisted that it should not be literally enforced in view of the understanding of the parties, more particularly of the Delawares, that they were thereby receiving full title to the occupied lands. To establish this contention it is claimed that in view of the character of the contracting parties they should not be held to the strict rule of evidence which denies the competency of parol testimony to contradict written agreements, and a class of cases is cited of which *Worcester* v. *Georgia*, (6 Pet. 515,) may be taken as an example. The language of Chief Justice Marshall is quoted, in which he said:

"The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used in the latter sense. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction."

But the Chief Justice was here dealing with a treaty negotiated between the representatives of the United States and those of the Indians, wherein the disparity of the contracting parties in education and knowledge of law and the use of language is obvious.

The contract of April 7, 1867, was negotiated between representatives of Indian nations meeting upon equal terms. In the testimony of John G. Pratt, called for the Delawares, and at one time Indian agent for the Delaware agency, it appears:

"Question. Do you know whether or not the agreement frequently referred to in your testimony was read over to the two delegations representing the Delawares and Cherokee tribes of Indians?

"Answer. It was read over repeatedly; read over and corrected and altered and read over again several times, and each party put in his suggestions, until they finally harmonized.

"Question. Then, as I understand, the agreement, as finally signed, expressed the wishes of both sides, and both sides were fully satisfied with all it contained?

"Answer. No; the Delawares were not satisfied, but they signed because it was the best they could do. They wanted to own the land outright.

"Question. They did not contend at any time afterwards that the agreement did not fully express what they intended to express, did they?

"Answer. No, sir; I did not hear anything of that kind."

We can perceive no room in this case for a departure from the familiar rules of the law protecting written agreements from the uncertainties of parol testimony. The testimony offered was in the main that of interested persons nearly thirty years after the agreement had been reduced to writing and signed by the parties thereto. Nor can we find a latent ambiguity in the terms of the contract which requires the admission of parol testimony to explain its effect. In the light of the circumstances and the language used in the writing, its construction is not rendered difficult because of latent ambiguities. It is claimed as a cogent circumstance, which should be considered in construing this agreement, that the Cherokee Nation received one dollar per acre for these lands—a sum sufficient to cover their full value, and of consequent importance in determining the character of the estate conveyed. In the Journeycake case it was held that, in consideration of the sum paid for citizenship rights, the Delawares obtained an interest in the lands of the Cherokee Nation, although the same were not considered in making up the sum paid for what has been denominated the right of citizenship. In that case it is pointed out that at the time the agreement under consideration was made the Cherokee Nation possessed, in addition to the "neutral" lands in Kansas, which were estimated at $1,000,000 in making up the total of the Cherokee national fund of $1,678,000 upon the basis of which the Delawares paid into the common fund—

"Strip" lands in Kansas (about)..... 400,000 acres.
Lands west of 96 degrees, Indian Territory, (about).....8,000,000 "
Lands east of 96 degrees, Indian Territory Home reservation (about) .....5,000,000 "

In that case it was held that the Delawares acquired a right in the distribution of the proceeds, not only of the Kansas lands, but as well in such sales as were made of this vast domain held by the Cherokee Nation. Of this feature of the agreement Mr. Justice Brewer, in the Journeycake case, says: "Neither should too much weight be given to the fact that the Delawares were to pay for their homes at the rate of one dollar an acre, for by that purchase they acquired no title in fee simple, and it is not unreasonable to believe that the price thus fixed was not merely as compensation for the value of the lands, (to be taken in the eastern portion of the reservation, where the body of the Cherokees had their homes, and therefore probably the most valuable portion of the entire reservation,) but also as sufficient compensation for an interest in the entire body of lands, that interest being like that of the native Cherokees, limited to a mere occupancy of the tracts set apart for homes, with the right to free use in common of the unoccupied portion of the reserve, and the right to share in any future allotment."

We conclude, then, that the registered Delawares acquired in these lands only the right of occupancy during life, with a right upon allotment of the lands, to not less than 160 acres together with their improvements, and the children and descendants of such Delawares took only the rights of other citizens of the Cherokee Nation as the same are regulated by its laws.

The bill further seeks to exclude from the allotment of Cherokee lands and funds certain citizens alleged to have been illegally admitted to citizenship, thereby wrongfully diminishing the shares of the Delawares in the common property. At the time of the agreement of April 7, 1867, the constitution, secs. 2 and 5, of the Cherokee Nation had been amended to read:

"SEC. 2. The lands of the Cherokee Nation shall remain common property until the national council shall request the survey and allotment of the same, in accordance with the provisions of article 20th of the treaty of 19th July, 1866, between the United States and the Cherokee Nation.

"SEC. 5. No person shall be eligible to a seat in the national council but a male citizen of the Cherokee Nation, who shall have attained to the age of twenty-five years, and who shall have been a *bona fide* resident of the district in which he may be elected at least six months immediately preceding such election. All native-born Cherokees, all Indians, and whites legally members of the nation by adoption, and all freedmen who have been liberated by voluntary act of their former owners or by law, as well as freed colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months from the 19th day of July, 1866, and their descendants who reside within the limits of the Cherokee Nation, shall be taken and deemed to be citizens of the Cherokee Nation."

These constitutional provisions were in full force when the Delawares acquired their rights and when they were incorporated, or, as the agreement expressed it, "consolidated," with the Cherokee Nation. Under its terms the Delawares have participated in political rights and have taken part in the government of the nation. It is claimed that these amendments were illegally adopted for want of compliance with authorized methods for amending the national constitution. But the nation has never undertaken to set them aside or call in question their force and effect. They were in the fundamental law when the Delawares were made a part of the Cherokee Nation and the rights exercised were only those belonging to the nation when the Delawares saw fit to subject themselves to the laws of a new nation of which they were to become a component part upon equal terms with other citizens. The Cherokee Nation has many of the rights and privileges of an independent people. They have their own constitution and laws and power to administer their internal affairs. They are recognized as a distinct political community and treaties have been made with them in that character. (*Cherokee Trust Fund Cases*, 117

U. S. 285.) It is not reasonable to suppose that in the act under which these proceedings were brought it was intended to authorize inquiry into the administration of the political affairs of the Cherokee Nation with a view to setting aside the adoption of constitutional amendments and the revision of political action in admitting persons to citizenship in the nation under authority of its constitution. The same conclusion disposes of the contention of the appellants that relief can be granted in this case in respect to alleged maladministration of the financial affairs of the Cherokee Nation with a view to holding it to account in favor of the Delawares prosecuting this suit. We are authorized by the enabling act to determine the contractual rights of the Delawares in the national lands and funds, not to overhaul the political and administrative action of the Cherokee Nation.

The act authorizing this suit contemplates a determination of the rights and interest of the Delawares residing in the Cherokee Nation in the lands and funds of the Cherokee Nation under the compact of April, 1867. That it was the purpose of Congress to have a full and final determination of such rights is further shown in the Cherokee allotment act of July 1, 1902 Section 23 of this act provides:

"SEC. 23. All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said commission is ready to begin the allotment of lands of the tribe as herein provided, the commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition, according to such judgment as may be rendered in said cause; and said commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suit shall be advanced on the dockets of said courts and determined at the the earliest time practicable."

These acts contemplate a judgment of the court which shall determine the rights of the Delawares and Cherokees in the lands and funds of the Cherokee Nation in such wise as to enable a division to be made conformable to the rights of the parties as judicially determined. The Court of

Claims rendered a decree dismissing the bill. Whilst agreeing with the conclusions reached in that court, as to the rights of the Delawares, we think the bill was broad enough in its allegations and prayer for relief to require a definite settlement of the rights in controversy. Instead of dismissing the bill we think a decree should have been entered finding the registered Delawares entitled to participate equally with Cherokee citizens of Cherokee blood in the allotment of lands of the Cherokee Nation, with the addition that if there is not enough land to give to each citizen of the nation 160 acres, then the registered Delawares shall be given that quantity, together with their improvements. In all other respects the Cherokee citizens, whether of Delaware or Cherokee blood, should be given equal rights in the lands and funds of the Cherokee Nation. The decree dismissing the bill is so modified as to conform to the terms just stated; and as so modified it is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.